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THE LEGAL STATUS OF RELIGIOUS INSTRUCTION

IN

THE PUBLIC SCHOOLS

by

ALEXANDER EDMOND CANCE

A Thesis Submitted for the Degree of

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I. INTRODUCTORY.

The purpose of this study is an attempt to answer by a first hand investigation of original sources, three questions of considerable importance in educational legislation.

1. What is the legal and constitutional attitude of the states toward religion in general and religious instruction in particular ?

2. What is the attitude of the various states toward Bible reading and prayer in the elementary schools and higher institutions of learning ?

3. What is the interpretation of this aspect or tendency in terms of centralization of authority in educational affairs ?

Naturally the study must be in a measure historical; but the religious origin of our educational ideals and the early affinity between church and school in America are too well recognized to need any attention. It is clearly evident that the public school, like all other state institutions, has for nearly a century been considered a thing apart from sectarian control and influence. It is plain too, that almost from the beginning the state constitutions have openly declared freedom of church and state. The first amendment of the Federal constitution, "Congress shall make no law respecting the establishment of religion or prohibiting the free

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exercise thereof,"-confessedly a most unnecessary provision, for the reason that Congress had no power to make any such law, unless expressly or by necessary implication authorized so to do- shows how unwilling were the early statesmen to leave this question open to argument or implication, in that they refused to be satisfied until the fundamental law contained an express declaration to that effect. While this did not settle the matter fundamentally in the several states and while some early constitutions favored for a time certain interdependence of state and religion, this condition was only temporary and for nearly a century all state governments have been endeavoring to free themselves from every vestige of religious and sectarian affiliations; in nearly every state this has been an accomplished result since 1850.

But this by no means decides the question of religious instruction or of Bible reading in the public schools. The whole problem of state control has been a matter of very slow growth. The point where state authority ends and parental authority begins has never been finally decided. The necessity for moral or religious instruction in addition to intellectual training for our youth has always been recognized in American educational polity. To-day we emphasize the physical, the intellectual, the social and the ethical elements in all education. We believe social and moral efficiency to be the final test of education and instruction. The only

practical, vital point of controversy is who shall give the³
instruction ? In many states it is believed that the "religion and morality necessary to good government" can best be taught by the reverent use of the Bible in the schools. Others hold that Bible reading is sectarian instruction and hence must be forbidden. Some assert that it is not the function of the state to teach religion; others are clear in the opposite view.

This study attempts to gather all the legal evidence from reliable original sources and to organize and tabulate the data collected into a convenient form for reference. An attempt is also made to interpret the trend of the times in the light of all the evidence presented. The study is purely impersonal. Conditions that do exist rather than conditions that ought to exist, form the subject matter of the thesis. As far as it goes, the study is exhaustive. All material and data have been gleaned from authentic documents; and only first hand opinions have been considered.

A cursory glance at the possible sources of evidence reveals six varieties of legal documentary contributions.

These are:

- (a) State Constitutions.
- (b) State School Codes.
- (c) Federal laws governing the Federal schools.
- (d) Reports of the various State Superintendents.

(e) Municipal charters and Rules and Regulations of city Boards of Education.

(f) State Supreme Court decisions.

(g) Official opinions of Attorneys-General and State Superintendents (usually rendered on appeal).

In addition there are four main sources of extra legal evidence:

(a) Personal opinions (statements) of State Superintendents and other educational officers.

(b) Common usage or custom as to religious exercises in the public elementary schools of the several states.

(c) Custom or usage in the various higher state institutions (universities, agricultural colleges, normal schools etc.).

(d) Public opinion, as far as it is possible to determine it, in the different states.

Immediate information was gained on these four points by personal letters addressed to State Superintendents of forty-five states and the Superintendents of public instruction of the four territories. By means of these letters, issued in the form of a questionnaire, it was possible also to check up the data gathered from legal documents and to bring it down to date.

Before considering in detail the results of the investigation, it may facilitate a ready understanding of them to anticipate, by a few pages, a summary of the fundamental

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facts which the investigation reveals. The following facts seem justified:

1.-In every state absolute separation of church and state is guaranteed either by the constitution there or by statute. This is in full agreement with Judge Cooley, who declares "Compulsory support by tax or otherwise of religious instruction"¹ to be one of the fundamental constitutional limitations of all state constitutions.

2.-Perfect freedom of conscience is assured or implied in all state constitutions; that is, non-interference with religious scruples. Quoting Judge Cooley again, "The Constitutions, therefore, have not established toleration merely, but religious equality."²

3.-Sectarian, denominational, partisan instruction in schools supported by the people by public funds is almost universally forbidden.

4.-Instruction in morals and manners is nowhere forbidden usually encouraged, often required. In several states provision for religious instruction is distinctly enjoined on legislators.

The following, then, are the essential and fundamental points in controversy:

(a) Sectarianism vs. religion.

(b) State and civil vs. local and educational control of

1.-Cooley: Constitutional Limitations Chap.13.

2.-Cooley: Constitutional Limitations (5th ed.) p.577.

the means of instruction.

(c) Sectarian instruction or worship vs. Bible reading.

These three questions are bound up in court decisions of fifty years. These are the ghosts that will not down; here are the seeds of wrath and bitterness and strife, presumably for decades yet to come; questions that have been decided in judicial chambers again and again - yet never settled; questions which, no matter how well hedged in by legal enactments, persistently break out, each time in a new place. Some of the widely contradictory laws and the judgments passed upon them will be considered in order.

II. CONSTITUTIONAL PROVISIONS and LEGAL ENACTMENTS.

From the tabulated summary presented in table I, it is easy to deduce the fact, shown by a single glance, that except for the provision against the appropriation of public funds to sectarian schools, the majority of the constitutions are silent on the matter of religious instruction in the public schools. Indeed the early constitutions have little to say definitely in regard to education. While all of the original thirteen colonies contemplated the encouragement of public schools, it was their evident purpose to leave their entire control in the hands of local authorities. Centralization of authority in educational affairs has been a matter of very slow growth.

So far as religion is concerned, schools grew out of the church and for a long time after separation of church and state had become an acknowledged principle in American political theory, religious instruction of a non-sectarian character, given in the common schools, was deemed not only not inconsistent with this theory, but a matter fully as essential as the teaching of grammar and arithmetic. Indeed, a large number of states hold this opinion today. For this reason, among others, there is no constitutional prohibition even of granting state aid to "sectarian" school found in any constitution prior to the year 1848.¹

1. Const. of state of Wisconsin, Article X, Section 3.

The Ordinance of 1787, establishing the government of the North-west territory, declared: "Religion, morality and knowledge being necessary to good government, schools and the means of education shall forever be encouraged."¹ The evident of this provision is shown on its face. At least five states have incorporated the declaration in their constitutions, although they do not hold that this enjoins upon the state the duty of providing religious instruction for its youth.

After the middle of the nineteenth century, as public schools began to come more directly under state authority, when the idea of compulsory education began to take root, when equal opportunities for education and equality of burden of taxation commenced to make itself felt, and the great influx of foreigners of every creed and kind gave a new meaning to sectarianism our legislators found it necessary to say some definite things on the subject of sectarian teaching; the purpose was to prevent any religious sect from controlling the school funds rather than to forbid Bible reading or religious instruction of a general nature in public schools. Of the period from 1835 to 1861, Commissioner Harris says: "During this period state schools were first antagonized by religious bodies.--The growth and increasing excellence of state schools drew

1. Ordinance of 1787, Article III.

away many pupils from the church schools. Again, as these schools grew in power they were less subject to ecclesiastical direction. Then, the rapidly growing school funds and revenues of the state schools became an object of jealousy. All these reasons added to the antagonism.---These causes compelled the safeguarding of school funds from division and misappropriation.¹ The constitutions and statutes of the latter part of this period show these precautions.

Preceding the last decade of the nineteenth century, thoughtful people became alarmed at what was considered a concentrated effort of the Roman Catholic church to get control of the public schools; i.e. under public sanction and salary, to teach their distinctive religious doctrines therein. At the Nashville meeting of the National Educational Association in 1889 the matter of religious education in state schools and the granting of public funds to parochial schools was very warmly discussed, with the result that more firmly than ever were legislators and citizens determined that the American common school be kept forever free from sectarian control and influence.

Table I shows that since 1848 no less than thirty states have made provision against the appropriation of public money to sectarian schools or against sectarian instruction or both. At least seventeen constitutional

1. W.T.Harris: Report of U.S. Com. of Ed. '92-'93, p.325.

provisions are found within that period applying to the inculcation of sectarian or denominational doctrines. It is interesting to note that the first constitutional mention of sectarian doctrine is found in the Wisconsin document of 1848, and that during the period of greatest controversy perhaps--1885 to 1895--there were passed no less than eleven provisions bearing directly on this subject, the constitutions of the group of newly elected states (1889--1890) being especially explicit on sectarianism.

An increasing attention to educational details in their various particulars marks the later constitutions or the revisions of constitutions since the Civil War. It is easy to see why, as the secular and state idea of education gained ground and the western states with their heterogeneous populations began to apply for admission, the religious ideals of the public school should become detached, and why the conception of a secular, non-religious school should be no longer repugnant to a fair minded people, at bottom essentially religious. At any rate, it is true that sectarian teaching is no longer tolerated in any of our American commonwealths and in nine states religious instruction or religious exercises are distinctly forbidden by law.¹

Bible reading per se is not prohibited by any consti-

1. Idaho, Arizona, Kansas, Utah, Wisconsin (by decision), Montana, Washington, (decision) Nevada, Wyoming.

tution; and whether such reading is sectarian instruction or simply a general religious exercise is a question that must be decided by final interpretative authorities in each separate state. The discussion of these decisions is taken up fully in chapter VI.

One state constitution, that of Mississippi, provides that "The Holy Bible shall not be excluded from any public school", and (or but) that no moneys shall be applied from public funds to any school where sectarian teaching is done.¹ Georgia seems to be the only state that provides for the appropriation of state funds to other than public schools. "Nothing in this article (Art.VIII,Sec.1) shall be construed to deprive schools in this state, not common schools, from participating in the educational fund of the state, as to all pupils taught therein in the elementary branches of an English education."²

Fifteen states, the majority in the North Atlantic section, have no constitutional utterances whatever on religious education or sectarian instruction. The other thirty states have provisions against "sectarian" or "religious" education or against the appropriation of public funds for "private", "religious", "denominational" or "sectarian" schools or "in any aid thereof".

1. Const. of Miss. Art. III, Sec. 18; Art. VIII, Sec. 208.

2. Const. of Georgia, Art. VIII, Sec. 5 (Edition of 1901)

Legislative Enactments.

It is to be borne in mind that the statutes under discussion have reference solely, or at least largely to elementary and secondary schools in all cases in which this fact is not distinctly mentioned. Laws that have a wider application or that relate only to higher institutions of learning are specifically noted.

In general, statutory enactments on educational matters are more definite and detailed than the constitutions; on the religious phase, in a number of states, they enrich and supplement the constitutional provisions, or where the constitution is silent, voice the popular sentiment. Table I attempts to give the gist of current legislation only, those laws now on the statute books, whether enforced or not. The dates given are those of the editions of the school laws to which reference is made- they do not refer to the dates of enactment. The great majority of these laws were reported as now operative by the several state superintendents who responded to the questionnaire previously mentioned, of January 1906.

Unlike constitutions, school laws frequently make particular mention of Bible reading. This reading almost invariably signifies, sometimes by definite statement, sometimes by implication only, the reading of the Bible without note or comment at morning exercises. This reading is often accompanied by prayer and sometimes the singing

a hymn, although the statutes usually mention neither.

First of all, twenty-three states report no enactments whatever concerning religious exercises or instruction. In twenty of these the Bible is very generally read in the public schools,-in some states much more uniformly than in others. Ten states provide by statute that the Bible shall not be excluded from any public school. Two¹ of these provide simply for its non-exclusion.

Massachusetts has a law requiring the daily reading of the Scriptures in all her schools; and Pennsylvania,"The Scriptures come under the head of text books and shall not be omitted from the list."²

Five states³ provide that no sectarian instruction shall be given(New Jersey:"No other religious exercise."),but that the Bible shall not be excluded. To this list may be added Mississippi, which retains the Bible and forbids sectarianism by constitutional provision.

Fifteen states and two territories have laws against "sectarian instruction","atheistic or infidel doctrine", "religious exercises" or "sectarian or partisan publications and texts" in any of the common schools. In nine of

1. Indiana and Iowa.

2. Pennsylvania School Code: Chap.CLXVII,Sec.115.(1903)

3. New Jersey, Georgia, Kansas, North and South Dakota. Mass.,N.H.,and Penn'a. also forbid sectarian teaching.

these states the Superintendents report a general reading of the Bible at opening exercises; in one, North Carolina, it forms part of the course of study formulated and recommended by the State Superintendent.

Wisconsin, Idaho and Washington¹ hold that their laws prohibit the reading of the Scriptures, or, in fact, any other religious exercise in the schools; although the decisions of the Wisconsin Supreme Court, as will be noted later, distinctly states that all portions of the Bible are not to be regarded as sectarian and that the Bible may be read legally if a proper selection of passages is made; and the Superintendent of schools of Idaho reports devotional services held "in all state institutions".

California, Utah, Montana and Texas seem inclined to construe their laws as discouraging Bible reading, since such reading may so readily degenerate into religious instruction along denominational or sectarian lines. It is to be noted that these states are carefully insistent that training in manners, morals, truth, virtue, and right conduct shall be given in all their common schools.

While it is probable that many western states would construe sectarian instruction to mean any religious exercise used as a means of inculcating religious

1. Probably Nevada should be added-no report obtained.

2. Decisions of State Superintendents of Colo. are not consistent on this, -probably discourage Bible reading.

ideas, there are several states, among them South Dakota, that would make a clear line of demarcation between religious and sectarian teaching. That is to say, they believe in and stand for non sectarian religious exercises. Six states¹ mention "religious exercise" or "religious instruction" in so many words, the others by implication only. In the eastern and southern states --speaking for the majority-- religious instruction would not be prohibited unless given according to the forms, tenets or dogmas of some particular sect or denomination. Sectarianism is differentiated from religion. Just where many of the states stand on this question cannot be determined with accuracy. The point is this-- Nebraska is an example of a state that permits, apparently encourages, the reading of the Bible as an opening exercise, but is firmly opposed to any and all religious teaching in her schools. New Jersey, on the other hand, reads the Bible as a "religious exercise," but permits nothing sectarian. City Superintendent Mackey of Trenton says, "The reading of the Bible does not seem to be due to custom. The great majority of our teachers are earnest Christian men and women. The Bible reading is not perfunctory, but spontaneous in spirit. If it were omitted public sentiment would soon demand its reinstatement."²

1. Colorado, Idaho, Kansas, Utah, Wyoming and Arizona.

2. Reply to Questionnaire, April, 1906.

Where the Jews make complaint, the Old Testament only is read. The purpose is spiritual growth, and the attitude is essentially different. A number of supreme court decisions bear on this point.

Summing up the whole matter and including the interpretation of general provisions of statutes and constitutions by state supreme courts, or legally constituted authorities, these results appear:

1.-Twenty-six states forbid the expenditure of public funds for sectarian schools. Georgia alone provides for aid to other than public schools.

2.-Thirty-one states forbid sectarian instruction or the use of sectarian books.

3.-As to Bible reading in the schools(usually without note or comment at opening exercises).

a) Legally required in three states.

b) Legally permitted in fourteen states(in addition to the above).

c) Practically prohibited in four states.

d) Discouraged by legal interpretation in five states.

e) Bible legally required or permitted, sectarian instruction forbidden in fourteen, perhaps all(if tested) of the states in (a)and(b).

Table No.1
Constitutional and Statutory Provisions in Regard to
Religious Instruction.

Table I.
Constitutional and Statutory Provisions in Regard to Religious Instruction.

State	Const. Provisions	Statute Provisions	Bible Reading in Public Schools Custom or Usage	Public Opinion.
Maine	None	None	Bib. gen'ly read in Pub. schs. Reg'd attendance on relig. exers. in all state institutions	Decidedly favorable to Bible.
New Hamp.	None		Almost universal in pub. schs. Reg'd chapel attendance in all state institutions.	Very favorable.
Vermont.	Ch. II, Sec. 78. 1787 All relig. societies for advmt. of relig. and learn. to be encouraged.	None	Gen'ly read in pub. schs. Attendance, regd. at relig. exers. in state institutions.	Indifferently favorable
Mass.	None	Sch. Law: Sec. 72. 1904 Bib. reading regd. noth. sect. all'd. None exclud. acct. rel. Opin.	Bible regd. in pub. schs. Chapel compulsory in state institutions	Very favorable
Connecticut.	None	None	Bible gen'ly read in pub. schs. Relig. exs. dly. in normal schs. Regd. attendance.	"Probably favorable"
Rhode Island	None	None	Genly. read in pub. schs. Agr. Coll. chapel service dly. & Sun. attendance. expct.	Favorable
New York	Art. IX, Sec. 4, 1894. No funds for denom. schs. or in which denom. doct. taught.	Nothing in Consolidated School Law.	Customary to read Bible in pub. schs. Regd. in N.Y. City schools.	No opinion expressed.

State	Const. Provisions	Statute Provisions	Bible Reading in Public Schools.	
			Custom or Usage	Pub. Opinion.
New Jersey	Nothing said	Sch. Law (1900 revis.) Art. VII, Sec. 11 ^f . No relig. exs. in pub. schs. except. Bib. read. and Lord's prayer.	Very generally read in public schools.	Favorable.
Penn.	Art. X, Sec. 2, 1875. No pub. money for sect. schools. See Vt. id. (1776)	Sch. L, Sec. 11 ^g , CIXVII Bible shall be a text book. Sect. works excluded from schools.	Read in 87 th of pub. schs. in 1898. Compulsory relig. exs. in all state inst.	Favorable
Delaware	Art. X, Sec. 3. No fund for educ. purposes used to aid any church or sectarian school.	Nothing said.	Dly. reading in pub. schs. usual. Regd. relig. serv. in Coll. & Agr. sch. Chapel in Normal. "In no sense sectarian."	Favorable
Maryland	Nothing said.	Nothing said	Genly. read in pub. sch. Dly. relig. serv. in state inst. Regd. attendance.	Favorable
Dist. of Columb.			Howard Uni. dly. and Sun. services in chap. Att. regd. "Emphatically Christian"	
Virginia.	Nothing said	Nothing said	Voluntary dly. chap. in Uni. Regd. in Mil. schs. Customary in common schools.	"Opinion divided"
West Virgin.	Art. X, Sec. 4, 1862. Legis. shall encourage moral and scientific improvement.	Nothing said	5 Normals-regd. chap. Uni.-optional chap. and voluntary Bible course offered. In majority of pub. sch.	"Altogether favorable"

State	Constitutional Prov.	Stat. Provisions	Bible Reading in Public Schools	
			Custom or Usage	Public Opinion
North Car.	Art. IX. Sec. 1. 1868: Relig. morality and knowl. (Ord. of 1787) No funds for sect. use.	Sch. Law. Sec. 2539, 1895. No sect. or polit. book to be used in pub. schools.	Bib. read in course of study-1904. Genl. in pub. schs. Regd. chapel serv. dly. in University.	Favorable
South Car.	Art. X. Sec. 5, 1868. No sect. principles in any pub. sch. No funds for sect. schs.	None.	Usual in common schs. Regd. relig. services dly. in Univ. Agr. Coll. and Normal School.	Favorable
Georgia	Art. VIII. Sec. 5, 1877 <u>All</u> schs. teaching el. branches may rec. aid from pub. funds.	Sch. Law. Sec. 23 1905, Bib. shall not be excluded from pub. schs. No sect. bks. alld.	Usual in pub. schs. Regd. relig. services dly. in Univ. and Agr. Colleges.	"Bible reading popular in Georgia."
Florida.	No pub. funds for sect. schools. Art. XII, Sec. 13, 1895.	None	Genly. read in pub. schs. Regd. chapel dly. in all state instlt.	Favorable (inferred)
Alabama	Art. XIII, Sec. 8, 1875. No pub. money for support of sect. or de-nom. schools.	None	Common in pub. schs. Regd. dly. chapel in Univ. and Agr. Mech. Collere.	Favorable
Miss.	"Relig. etc. (Ord. 1817) Art. I. I. Sec. 18. Not to exclude Bib. from any pub. sch. in state. VIII, 208. No funds for sect. instr. 1890	None	Almost universal in pub. schs. Dly. worship regd. "nothing sect." in Univ. and A. & M. Col.	Favorable
Louisiana.	Art. 253 (1879, 1898) No pub. sch. money for support of sect. or private schools.	None	State Univ. Prayers dly. att. voluntary. Church attndnce. regd.	No opinion expressed

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1.

State	Const. Provisions	Statute Provisions	Bible Reading in Public Schools.	
			Custom or Usage	Pub. Opinion.
Texas	Art. VII, Sec. 5, 1876. No part of such money shall ever be used for support of any sect. school.	Sch. Law, Sec. 12, 1901 No money for any sect. school.	Probably not genly. read in pub. schs. Regd. dly. and Sun. chapel service in some state insts.	No opinion expressed.
Arkansas	Art. I, Sec. 23, 1868. "Relig., morality, being essential-pro-relig. and encourage schs." Art. IX, No sect prins. shall be taught.	Sch. Laws. Sec. 7074. No teacher shall permit sect. bks. to be used as reading texts in school.	Very genl in pub. schs. "Compelled to attend" at prayers in normal schs. Regd. dly. chap. in Univ.	Favorable
Kentucky	Sec. 197 (1891) No part of sch. fund or tax for any sect. or denom. sch.	Sch. Laws. Art. 1-8 '92 No infidel, immoral or sect. bks. or inst. to be used or given in any pub. sch.	Genl. in common schs. Bib. a text, dly. worship obligatory, church reqd. in state Univ.	Favorable
Tenn.	None	None	Genly. read in Pub. schs. Regd. att. at dly. relig. service Univ. and Agr. Coll.	Very favorable
Ohio	Art. I, Sec. 7 (1851) "Rel. morality, etc." VI, -2: No relig. sect shall ever control any part of sch. fund.		Weekly chapel reqd. Univ. Dly. chapl. regd. Normal schs.	None Expressed
Indiana	Nothing of direct bearing.	Sch. Law. Sec. 245, 1904 Bible shall not be excluded from pub. schs. of state.	Common in pub. schs. Semi-weekly chap. service, voluntary att. in state univ.	Favorable

State	Const. Provisions	Statute Provisions	Bible Reading in Public Schools	
			Custom or Usage	Pub. Opinion
Illinois	Art. VIII, Sec. 3, 1870 No state aid to any church or sect. use nor any sect. or denom. institution.	None	General, not universal in pub. schs. Relig. services in Normals. None in University.	"Not unfavorable"
Michigan	Art. IV, Sec. 40, 1850. No money from treas. to aid any relig. sect or society or relig. seminary.	Sch. Law: Sec. 4676. No public funds to sect. or relig. schools.	Very genly. used in pub. schs. Wkly. chapel exs. in Normals. Dly. in Agr. Coll. None in Univ.	Favorable.
Wisconsin	Art. I, Sec. 18, 1848. No money for treas. for relig. seminaries. X. 3, No sect. instr. allowed in pub. schs.	Laws of 1883, Ch. 251. Sec. 3: No text books that shall tend to inculcate sect. ideas.	Considered to be forbidden by S. Court decision. No relig. exers. in state insts.	Apparently unfavorable.
Minnesota	Art. VIII, Sec. 3, 1877. No moneys for schs. where docts. of any partic. rel. or Christ. sect are taught.	None	Read in 1/4 of pub. sch. Dly. chap. serv. reqd. in Agr. Coll. and Normals. Voluntary att. in Univ.	"Majority favorable"
Iowa	None	Sch. Law Sec. 2805, 1904 Bib. shall not be excluded fr. any sch. or inst. in state. Child not reqd. to read contra parent.	Very genl. in pub. schs. Dly. worship. reqd. in Normals and Agr. Coll. Wkly. serv. in Univ.	Very favorable.
Missouri	Art. X, Sec. 11, 1875 No funds for sect. or relig. purposes.	None.	Very genl. in pub. schs. Relig. serv. dly. in all state insts.	Most favorable.

State	Const. Provisions	Statute Provisions	Bible Reading in Public Schools.	
			Custom or Usage	Pub. Opinion.
Kansas	Art. VI. Sec. 8, 1859 No relig. sect shall control any part of sch. funds of state.	Gen. Stat. 6284, 1901. No sect. or relig. in-struct. in any city pub. sch., but Holy Bib. not to be prohib.	Genly. read in pub. sch. Dly. chapel, att. volunt. in Univ. Regd. in Agr. Coll. and normals.	Favorable
Nebraska.	Art. VIII, Sec. 11, '75 No sect. instr. in any sch. aided by pub. funds. See Ark. 1d. Art. I, Sec. 16.	None	Genly. read in pub. sch. Thrice wkly. relig. serv. voluntary in Univ. Dly. devot. serv. reqd. in Normal.	Favorable
North Dakota	Art. VIII, Sec. 147 Pub. sch. shall be free from sect. control. Sec. 152. No funds for sect. sch.	Sch. Law: Sec. 754, 1905. Bib. not a sect. bk. Not to be excld. from any sch. May be read dly. no pupil reqd. to be present contra parent.	Read in maj. of pub. sch. Relig. serv. dly. att. reqd. in normals. Wkly. chap. volunt. in Univ. "Noth. sect. allowed"	Favorable
South Dakota	Art. XXVI, Sec. 18, '89 Pub. schs. free from sect. control. VIII. 16. No sect. inst. in pub. schs.	Sch. Law. p. 44, Sec. 18, 1905. No sect. doct. taught in any pub. sch. but Bib. may be read.	Very commonly read in pub. sch. Dly. chap. in Univ. and Agr. Coll. Voluntary. Relig. exs. in normals.	Favorable "People wish more than mere reading."
Montana	Art. XI, Sec. IX, 1889. Nor shall any sect. tenets be taught in any pub. ed. inst. of state.	Sch. Law. Art. VIII, 1863. No sect. partisan or indenom. doct. or Bk. tau't or used in pub. schs.		No opinion expressed.
Colorado.	Art. X, Sec. 7, 1876. No aid to any sect. or denom. sch. or soc. Sec. 8. No sect. tenets ever taught in pub. schs. or att. at rel. exs. made compulsory.	None	Not genly. read in pub. schs. Devotional exs. thrice a week in Univ. Att. voluntary.	No opinion,

State	Const. Provisions	Statute Provisions	Bible Reading in Public Schools	
			Custom or Usage	Pub. Opinion.
Wyoming.	Art. II, Sec. 19, 1890. No money to any sect. or relig. inst. VII, 12-No sect. instr. tolerated in any pub. sch. No regd. att. at any relig. exrcs. therein, nor any sect. doct. taught.	None	Bib. read in most pub. schs. Wkly. chap. and Sun. vesper in State Univ.	"Favorable if sect. instr. is not resorted to."
Utah	Art. X, Sec. 1, 1895. Pub. sch. free from Sect. control. Sec. 13 sect. or denom. doct. No money for any sch. to be taught in any contrld. by any sect. pub. sch. morals tau't.	Rev. Stat. Sec. 1848. No atheistic, infidel or denom. doct. No sect. to be taught in any pub. sch. morals tau't.	Not genly. read in pub. sch. Dly. relig. chapel service in Normals and Univ.	Unfavorable
Nevada	Art. IX, Sec. 2, 1864. Any sch. dist. allow sect. instr. deprived of its share sch. fund. used in any pub. sch.	Sch. Law. XIII, Sec. 5. No sect. doct. tau't or	No information	
Idaho	Art. IX, Sec. 6, 1890. No regd. att. at any relig. exs. whatever. in pub. schs. No sect. or sect. char. used.	None	Bible not genly. read during sch. hours. Relig. exs. in all state ed. inst. Voluntary.	No opinion expressed
Wash.	Art. IX, Sec. 4, 1889. All pub. schs. forever free from sect. control and influence.	F. 53, Sec. 110, S. Law Same as const.	Not genly. read in pub. schs. To limited degree in higher insts.	Probably unfavorable
Oregon	None	None	No genl. reading in pub. schs. Dly. chap. in normals. no rel. exs. in state univ.	Rather unfavorable

State	Const. Provisions	Statute Provisions	Bible Reading in Public Schools	
			Custom or Usage	Pub. Opinion
California.	Art. IX. Sec. 8, 1879 No pub. money for sect. schs. No sect. or denom. doct. tau't taught in any pub. or instr. given, directly or indirectly.	Sch. Law. Sec. 1677. No sect. bk. or Publn. used or sect. doct.	In a few pub. schs. only. No rel. exs. in higher state insts.	Unfavorable
Arizona.	Sec. 112, Terr. Laws. 1905 Books, teaching sect. or denom. doct. or giving relig. exs. in pub. sch. may have cert. if revoked.	Teacher using sect. books, teaching sect. or denom. doct. or giving relig. exs. in pub. sch. may have cert. if revoked.	Not genl. in pub. schs. No relig. exs. in higher state inst.	Unfavorable
New Mexico	Sec. 1581, Terr. Laws. 1905 be taught in pub. sch. of any city or town. Sec. 3552, Agr. Coll. shall be strictly non-sect. Sec. 3580, State Univ. ditto.	No sect. doct. to be taught in pub. sch. of any city or town. Sec. 3552, Agr. Coll. shall be strictly non-sect. Sec. 3580, State Univ. ditto.	Very little Bib. read. in pub. schs. No relig. services in higher state inst.	"Probably unfavorable
Oklahoma	None	None	Usual to open sch. dily. with Bib. read. Dly. chap. serv. in state institutions.	Generally favorable

DEPARTMENT OF EDUCATION

LEGAL STATUS OF RELIGIOUS INSTRUCTION IN PUBLIC SCHOOLS

State of 1906

I. Legal Attitude of the State Towards Religious Instruction in General, and Toward Bible Reading in Particular, in the Public Schools:

1. Legislative enactments governing this matter at the present time?
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2. Supreme Court decisions relating to, and date of the same?
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sults of the inquiry are given in Table I and summarized below.

1.-Reports and catalogues from forty-one state universities or colleges reveal these facts.

a. Ten universities (Illinois, Michigan, Wisconsin, Oregon, California, Nevada, Arizona, New Mexico, and probably Montana and Texas) have no devotional exercises.

b. Seventeen universities offer voluntary religious exercises; nine of these having daily devotional exercises and eight weekly or semi-weekly convocations opened with some religious service.

c. Fourteen institutions require attendance at daily chapel service, absences being noted as at any class lecture or recitation.

d. Ohio has a weekly assembly at which attendance is compulsory.

The University of West Virginia offers a lecture course of instruction by the chaplain on the "origin, history, structure, influences, personages---of the Bible.---credit will be given to students who enroll and do the work, equal to one-third of a full course." Chapel attendance is voluntary for others, but students whose parents wish them to enroll for this course and attend chapel regularly will be required to do so¹.

The catalogue of the University of Mississippi makes a strong statement in regard to religious teaching."The

1.-W. Va. Univ. Bulletin 1904-1905 p.36.

faculty are God fearing men---who belong to the church and are active Christians.---The evidences of Christianity form part of the course of study." Students and teachers are expected to join in the "daily morning worship." "Nothing sectarian is taught here."¹

The University of Tennessee "seeks to promote no creed nor exclude any; but will always do all in its power to promote the religious spirit and life."² The University of Virginia has a resident instructor and lecturer in Bible; the chapel devotions are voluntary. The state superintendent reports a weekly religious service in the University of Wyoming. The catalogue, "Any subject that would even suggest a creed or form of belief or a sectarian controversy is carefully avoided."³

One again notes the extreme care taken by a group of the far Western states to avoid even the appearance of things religious, as opposed to the sympathetic, outspoken, religious tenor and spirit of the eastern and southern states.

Turning to the catalogues of normal, agricultural and mechanical and military schools (under state control), reports from forty-one states and territories give the following:

a.-Wisconsin, Arizona, New Mexico, California, Nevada and Montana have no devotional chapel exercises.

b.-Twenty-six states require attendance at daily religious

1. Miss.Univ.Bulletin 1903-1904 pp.117-119.

2. Univ.of Tenn. Register '04-'05 p78.

3. Wyoming Univ. Melange '04-'05 p48.

worship in some or all of their schools of this grade.

c.-Two have required weekly chapel services.

d.-Seven have voluntary services either daily or weekly.

Where a military regime obtains, both in state and in Federal schools, chapel attendance is almost invariably an obligatory duty--as well as some Sabbath service.

Three other facts may be noted:

a.-Some or all of the higher educational institutions of seventeen states require that the students shall attend some church, of their choice, at least once each Sabbath.

b.-Eight simply state that students are "expected" to attend such service. Others simply "advise" such attendance.

c.-The institutions of at least twelve states call attention to the fact that they are state institutions, that sectarian instruction is forbidden, and that the devotional exercises are are simple scriptural reading and prayer avoiding all sectarian lines and controversy.

CHAPTER IV. GENERAL USAGE OR CUSTOM AND POPULAR OPINION
IN THE VARIOUS STATES REGARDING BIBLE READING IN THE
PUBLIC SCHOOLS.

In order to discover how widespread is the custom of Bible reading at the opening exercises of our common schools, as well as to note the divergence from or agreement with the legal enactments in this respect, the following was submitted to each of the state superintendents:

II. General Practice and Custom in Public Schools.

1. Is or is not the Bible generally read in the public schools?
2. Are any forms of "Bible readings" used?
4. In your opinion is the public attitude favorable or unfavorable toward the reading of the Bible?¹

1. To the first question, Indian Territory, Nevada, Montana, Texas, Louisiana, Florida, and New York did not respond. However, from other rather indirect evidence, it is certain that the Bible is read to a greater or less extent in the last three mentioned--as an opening morning exercise.

Of the forty-four states responding definitely or from which reliable data are at hand, thirty-four report that the Bible is "generally", "very generally" or "almost universally" read "without note or comment" and that in many

1.-See questionnaire facing p. 27.

instances the reading is accompanied by prayer or the singing of a hymn.

Five superintendents answer that the reading is not general, although the intimation is that in some localities the Bible is used.

Five reports state that there is practically no Bible reading.

In an investigation made in 1897 by Elizabeth R. Cook in the interest of a book of Bible readings which she sought to introduce into the public schools, she reports that replies from state and county superintendents of forty-five different states show that:

- a. The Bible is read in practically all states (Wisconsin excepted) east of the Mississippi river and in many west of it.
- b. "Three fourths of the city and county superintendents," who responded to the letters of inquiry, "report Bible^{reading} in part or all of the schools under their supervision."¹

2. In reply to the second question only ten states report any form of "Bible readings" in use, showing that the movement in this direction is by no means popular. Four of the ten reports say that such "Readings" are not at all generally used. In Michigan they are used only in Detroit and in Kansas in a "few" places.

1. Elizabeth Cook- "Bible Reading in Public Schools."
Report of Com. of Ed. 1897-1898- p. 1539.

3. Nine superintendents failed to offer any opinion on the fourth question, "Is public opinion favorable?"

a. Thirty reported public opinion "favorable", "most favorable", "almost universally in favor of", "in major part favorable", or "generally favorable" to simple reading of the Bible at the opening of the school day. Florida, though not reporting, may be added to this list.

b. Two reported "indifferently favorable" or "divided in opinion".

c. Seven states, all in the far West, (Wisconsin included), are reported as "generally unfavorable" in attitude toward any form of religious exercise in the common schools.

If the reports of these state superintendents are to be interpreted as rightly presenting the public mind on this matter, it is safe to conclude that the general sentiment of the people in the states lying east of the Pacific coast and Rocky Mountain groups is at least not unfavorable to the simple use of the Bible as a part of the morning exercises, provided no denomination or sect bias be given to such reading. Wisconsin, despite the strong stand taken by the supreme court on this matter and the popular interpretation thereof, is undoubtedly at one with her neighbors on this point. There is, however, very little, if any, Bible reading in the public educational institutions of Wisconsin. There are a large number of parochial schools, both Lutheran and Roman Catholic, that give considerable religious instruction.

CHAPTER V. BIBLE READING IN CITY SCHOOLS.

The custom of Bible reading in city schools presents a most interesting phase of this study. Many are organized under special charters, making them in many respects practically independent of the general school laws of the state, by which the great body of public schools is organized and administered. Even when organized under general charter provisions, most cities enjoy a certain autonomy and a large amount of freedom in the organization, government, discipline and curricula of their public schools. In subject matter and method they are limited only within very broad lines by legislative enactments in regard to educational affairs.

In their schools are gathered a most heterogeneous assortment of creeds and races . Their regulations must be broad enough often to include as many social classes , racial distinctions, religious sects and national prejudices as an entire state. Their school systems are carefully planned, organized and supervised. The matter of instruction is well considered. The needs of our city children should be ministered to more rationally and effectively than any other children in the land. This being true, it is of interest and importance to note what our cities say about religious instruction. It is evident that from the side of practical legislation what is possible and feasible to do in the way of religious exercises in the New York city schools, is possible, so far as conscientious scruples are concerned, in any state in the —

union. The truth of this is plain as soon as one considers⁷⁶
the cosmopolitan nature of Greater New York.

The data presented were gathered (1) from an examination of the charter provisions in regard to education or the Rules and Regulations of the Boards of Education of the cities noted in Table IIa. Most of the cities belong to a group of sixty, the first in population in the United States. The regulations of some of the cities in this group it was, however, impossible to obtain and a few others, readily at hand, were substituted. Early in the investigation it became evident that many municipalities were accustomed to open their schools with Scripture reading and prayer whose printed regulations said nothing about the matter. In some of these custom has practically required such opening exercises since the foundation of the city. It was evident, also, in the light of our proverbial disregard for legal requirements, that rules and regulations do not always define the current practice. To clear up these two questions and to ascertain, if possible, the attitude on the sectarian nature of Bible readings, (2) A question aire embodying these points was submitted to sixty city superintendents, including every state in the union. A copy of this questionnaire is inserted opposite page 48. Of the sixty superintendents, sixty per cent responded. A summary of their answers is set forth in Table IIb.

In all, the findings from more than eighty cities are

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tabulated. The results show that the Bible is read at opening exercises in seventy five per cent of the cities noted. These data are not sufficient to generalize on, the distribution is faulty and the number of cities too few. As individual instances they present much that is significant and valuable.

Table Iia gives a summary of the rules and regulations. Inasmuch as these rules are very similar, they are not given in full. A number of the typical cases are cited below. New York:- Title IV, Sec. 1151, Revised Charter of Greater New York reads as follows:"No school-- shall be entitled to receive public ---- moneys in which the religious doctrines or tenets of any particular sect shall be taught, inculcated or practiced----or in which any books----favorable or prejudicial to the ----tenets of any particular Christian or other religious sect shall be used.----But nothing herein-- shall authorize the Board of Education or the school board of any borough to exclude the Holy Bible without note or comment or any selections therefrom from any public school. The Board of Education is competent to decide what version shall be used.----Rights of Conscience as secured by the Constitution of the United States must not be violated."

Section 44-(3) By-laws-1904.

"All schools under the jurisdiction of the Board of Education shall be opened daily with a reading of the Holy Scriptures, without note or comment."

Chicago: Chicago has no rule for the common schools. In the parental school, provision is made for religious instruction, "outside the class room; on Sundays in" the rooms of the school building." (Rules and Reg. of Chicago City Schools: Sec. 772, 1904)

Philadelphia: Rule VI, Section 1. (Rules and Regulations)

"At the opening of each session of the schools at least ten verses of the Bible shall be read without note or comment--- by the principal. ---a suitable hymn may also be sung."

St. Louis: Regulation VI, Sec. 3 (1904) "---Teachers shall endeavor to impart love to God, love to man, a sacred regard for truth, sobriety, virtue---, but no teacher shall exercise any sectarian influence in the schools." Superintendent Soldan says: "There is a carefully prepared course of ethical instruction given in the St. Louis schools---This among people who are mainly Christians and by teachers who are largely so, unavoidably has a Biblical basis."¹

Boston: Chapter 16, Section 213-(Rules and Regulations 1904)

"The morning exercises --shall begin with the reading in each class room, --of a portion of Scripture without note or comment; and no other religious exercises shall be allowed in the public schools." Cambridge, Lowell, Fall River, Worcester, and other Massachusetts cities have practically the same ^{vision.} pro_A

Baltimore: Rules for the Government of Schools (1900) Art. VI. Sec. 6. "Each school shall be opened by the reading of a chapter or part of a chapter in the Holy Bible and the use of the 1.-Dr. Soldan: Reply to questionnaire, April 1906.

Lord's prayer. The Douay version may be used by those pupils who prefer it."

San Francisco: City Charter (edition 1905) Section 1617.

"The Board shall have the power to exclude from the schools ----all books, papers, tracts, or publications of a sectarian, partisan or denominational character."

Section 131, Rules and Regulations: "No sectarian or denominational publications of any kind shall be used in any school or made part of any school library; nor shall any denominational or sectarian doctrines be inculcated." The Bible is by intent excluded from the schools of California. Several other California cities have the same regulations as San Francisco.

Cincinnati: Rules and Regulations (since 1869) Sec.107.

"Religious instruction and reading, including the Holy Bible are prohibited in the common schools of Cincinnati."

Detroit uses a form of "Bible readings" in the public schools.

Washington, D.C.: Rules-Section 32. "No teacher shall exercise any sectarian influence in the schools." Section 47-

"The opening exercises in every school shall consist of a reading by the teacher, without note or comment, of a portion of the Bible, repeating the Lord's prayer, and appropriate singing by the pupils."

Minneapolis: (General Rules) Sect. 56 (1901).

"Teachers shall in no wise interfere with the political or religious opinions of the pupils. Public education is to be

regarded as general, moral and secular; all classes, conditions and creeds are alike subjects of its benefits. The school buildings shall be used only for purposes pertaining to the public education of the children of the city."

Wichita, Kansas: Resolutions adopted in 1905.

Bible in Public Schools.-

"WHEREAS, the consensus of public opinion, re-inforced and emphasized by the decrees of our Federal and State Supreme Courts, esteems the Bible as an "Exhaustless fountain of Truth" and the most reliable guide and compilation of precepts for the training and development of men and women, in private and public morals; and,

WHEREAS, the principles of approved civics and sociology, as applied to human activities, demand that degree of probity and mutual consideration in man's relations and dealings with one another, best exemplified in the doctrines and teachings of the Holy Scriptures, as expressed in the "Golden Rule"; now, therefore,

BE IT RESOLVED, that the Board of Education, for the purpose of aiding in the inculcation of civic righteousness and in the well grounded condemnation of all dishonest, corrupt and immoral practices in private and public life, in the minds of the coming citizens of our community and Republic, hereby declares it advisable that all teachers in the public schools of the city of Wichita be recommended and are hereby requested, in the opening exercises, or at other

convenient period, to make such non-sectarian, but effective use of the Bible, in reading or having read, texts, therefrom, as will constitute suitable and appropriate memory gems, from a scientific, literary, historic, philosophic, poetic, or spiritual standpoint, and so contribute to the better culture and higher moral sense of the pupils, freed from all dogmatic, or sectarian interpretation or comments."

A few extracts from the replies of City Superintendents may be noted.

William F. Fox, Richmond, Va. "---We are forbidden, in this city to teach anything of a religious or partisan character. ---There is stated reading of the Bible in all our schools. Passages are chosen that are not objectionable to Jews or others.---The schools are notified that it is the wish of the Board that the Bible be read.---Public sentiment is very strongly in favor of Bible reading."

A.B.Blodgett, Syracuse, New York:"Bible reading was formerly required by regulation of the Board of Education, but was stricken from the rules five years ago. The intent was to prohibit the reading of the Bible, hence no reading is done, and no superintendent, principal or teacher may read."

C.P.Humple, M.A.,Vicksburg, Miss,:"Bible reading has been permitted in the judicious discretion of the teacher.--- Because of a heterogeneous mixture of different Protestants Roman Catholic and Jewish sects here, public sentiment is against any regular religious service in the public schools."

A.T.Stewart, Washington, D.C.:"In a recent attempt to introduce definite religious instruction into the public schools, it was shown to be in opposition to public sentiment and the Board of Education declined to change the existing rule which provides only for reading of the Bible without note or comment with appropriate singing."

The results of the inquiry may be summarized as follows. From the data tabulated in Table IIa:

Bible reading required by regulation in twenty-seven cities.

Bible reading permitted by regulation in two cities.

Bible reading by custom in four cities.

No regulations whatever in this regard in seven cities.

Bible reading actually or practically forbidden in eight cities.

Sectarian instruction or influence guarded against in thirteen cities.

From the data compiled from replies to question aire tabulated in Table IIb.

Regulations requiring the Bible to be read, fourteen cities.

Regulations permitting Bible to be read, two cities.

Regulations prohibiting Bible reading, one city, New Orleans.

Regulations against "sectarian" or against "religious" instruction in eleven cities.

In nine cities where sectarian or religious instruction is forbidden, the Bible is permitted or required.

Bible is permitted and read by common consent in seven cities.

Bible is permitted but not read in Atlanta and Vicksburg.

The Bible is really required to be read by custom in Raleigh North Carolina.

The Bible is not read- forbidden by public sentiment in six cities.

The Bible is not read, but no adverse opinion is given in three cities.

"Bible Readings" are used in three cities.

The conclusion of the whole matter in the school systems cited.

Bible reading is required or permitted in fifty-nine cities.

Bible reading is actually or practically forbidden in eighteen cities.

No rules or regulations concerning the matter - seven cities.

Table II

**Rules and Regulations, Public Sentiment and
Actual Practice of Cities with reference to Bible Reading
in the Elementary and Secondary Schools.**

TABLE II a.

Tabulation of Responses to Questionnaire of April 1906.

City	Religious Exercises or Bible Reading in Schools.		
	Regulations	Practice	Pub.Opinion
Albany	None	No reading	Prohibitive
Atlanta	None	No reading	Permissive
Birmingham	None	In all grades	Permissive
Charleston S.C.	Nothing sect.Prov. Psalms & Lord's prayer shall be used daily.	In all schools	Requires such exercise
Boston	Bib.shall be read No other rel.exs.	In all schools	Requires it
Covington Ky.	None	In a few schools	Against it
Duluth	None	In most schs.	Permissive
Des Moines	None	No reading	Silent
Denver	Bib. to be read	Very general	Permissive
Fargo, N.D.	None	In part of schs.	State law governs
Ft. Wayne	Bib.reading reqd. Lord's prayer used	In all schools	Requires it
Ft. Worth	No sect. inst.Bib. & Lord's prayer in High School.	In part of schs.	Permissive & Favorable
Hartford	Dly.rel.exs.reqd.	In all schs.	Very favorable
Kansas City Mo.	None	In some schools	Permissive
Lowell	Bib.reading reqd.	In all schools	Requires
New Orleans	No sect.or relig. exs.No Bib.read'g	No reading	Prohibitive
Oakland, Cal.	None	No reading	Unfavorable

City	Religious Exercises or Bible Reading in Schools		
	Regulations	Practice	Pub. Opinion
Providence	None	In all schools Bib. & Lord's pr.	Permissive
Pittsburg	"Bib. Readings" recom'd by Bd. of Ed.	In some schools	Permissive
Raleigh	None	Lord's Pr. & Bib. in all	Practically requires it
Rochester N.Y.	Nothing sect. or religious	No reading	No answer
Reading	At least 10 vs. of Bib. reqd. dly.	In all schs.	Requires it
Richmond	Relig. & partisan teaching forbidden	Bible read dly. in all schools	Permitted Very favorable
Sacramento	None	No reading	Prohibitive
St. Louis	Nothing sectarian	No reading	No expression
Savannah	Bib. & Lord's Pr. reqd. dly. in all schs.	Very little reading done	To limit the requirement
Sioux City	Nothing sect. to be taught. Bib. may be read.	In a few rooms	Permitted
Syracuse	None. Really prohib.	No reading	Against it
Salt Lake City	No sect. influence ethics taught	No reading	Against it
St. Paul	None	No reading	Silent
Trenton	Noth. sect. Bib. reqd.	In all schools	Reqd. Very favorable
Wichita	Non. sect. Bib. reqd.	In all schools	Very fav'ble
Vicksburg	None	No reading	Permissive
Wheeling	Bib. and L.P. reqd.	In all schools	Mandatory
Washington	Bib. & L.P. reqd. dly.	In all schools	Requires it
Wilmington Del.	No sect. or rel. inst. Bib. & L.P. permitted	In all schs.	Very fav'ble

TABLE IIb.

Tabulated from City Charters and Rules and Regulations of
Boards of Education of Cities

Bible without note shall be read at opening exercises	Bible may be read at opening exercises	Bible actually or practically exclud- ed from school
Alleghany, Penn.	Indianapolis, Ind.	Butte, Mont.
Baltimore, Md.	Winona, Minn.	Cincinnati, O.
Bridgeport, Conn.	---o---	Davenport, Ia.
Cambridge, Mass.	Bible permitted and read as a matter of general consent.	Galveston, Tex.
Camden, N.J.		Minneapolis, Minn.
Columbus, Ga.	Burlington, Ia.	Milwaukee, Wis.
Dayton, O.	Charlotte, N.C.	San Jose, Cal.
Decatur, Ill.	Lancaster, Penn.	San Francisco, Cal.
Detroit, Mich.	Roanoke, Va.	
Fall River, Mass.		
Harrisburg, Penn.		
Jersey City, N.J.		
Louisville, Ky.		
Meridan, Conn.		
Montclair, N.J.		
Manchester, N.H.		
New York, N.Y.		
New Bedford, Mass.		
New Haven, Conn.		
Newton, Mass.		

Bible without note shall be read at opening exercises.	Nothing about Bible reading in Rules and regulations.	Provisions regarding sectarian instruction or influences.
Portsmouth, N.H.	Cleveland, O.	Chicago, Ill. ¹
Philadelphia, Penn.	Chicago, Ill.	Denver, Colo. ²
Portland, Me.	Dallas, Tex.	Nashville, Tenn. ³
Somerville, Mass.	Jacksonville, Fla.	St. Paul, Minn. ⁴
Topeka, Kansas.	Omaha, Neb.	St. Louis, Mo. ⁵
Worcester, Mass.	Portland, Ore.	Spokane, Wash. ⁶
	Toledo, O,	Winona, Minn. ⁷

1.-Regulations: Sec.230 (1905)--Teachers shall introduce no questions of sectarian or partisan character into schools.

2.-Rules of Board: Sec.27 (1903)--No teacher shall exercise any sectarian influence whatever.

3.-Reg.:Sec.17,(1891)--No teacher shall introduce any sectarian or partisan views into school on pain of discharge.

4.-Reg.:Sec.72 (1902)--Teacher shall not influence religious belief of pupils nor use school for anything but secular education.

5.-Reg.VI,Sec.3 (1904)--No teacher shall exercise any sectarian influence in school.

6.-Rules:Sec.56 (1904)--Teachers shall carefully guard against questions of a sectarian,partisan, or political nature.

7.-Reg.:Sec.86 (1900)--No partisan or sectarian question shall be brought into the schools.

UNIVERSITY OF WISCONSIN

DEPARTMENT OF EDUCATION

LEGAL STATUS OF RELIGIOUS INSTRUCTION IN THE PUBLIC SCHOOLS OF CITIES

City of State

I. Municipal Charter Provisions or Regulations of the Board of Education in Regard to:

1. Sectarian or Religious instruction or exercises in public schools
.....
.....
2. The reading of the Bible or prayer
.....
.....

II. General Custom or Actual Practice in the Public Schools.

1. Is there stated Bible reading in part or all of the schools?
.....
2. Is any form of "Bible Readings" used, or other religious exercise conducted?
.....
3. Is Bible reading *required, permitted or prohibited* by custom?
.....

III. In the Absence of any Charter Provisions or Regulation of the Board of Education Relating to the Matter.

1. Who decides, in any school, whether or not the Bible shall be read?
.....

IV. General Remarks on Public Sentiment or other Points Bearing on Religious Exercises or Instruction.

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THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY

JOHN BURNET

OF

SCOTLAND

1678

LONDON

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VI. SUPREME COURT DECISIONS.

1. Preliminary.

The array of opinions from the wisest judges in the land is an exhibit at once interesting, significant, and altogether inconclusive. In no way is the exceedingly delicate and complicated nature of the problem and its bearing seen more clearly than by a careful study of judicious deliverances thereupon. State constitutions differ somewhat, statutes differ still more widely and judicial decisions, based on constitutional provisions, or rather, lack of definite provisions, are still more divergent and conflicting.

No state by constitution or statute law prohibits Bible reading per se. On the other hand, Judge Cooley, perhaps the highest authority on American constitutions, declares "Those things that are not lawful under any of the American constitutions may be stated thus:(a) Any law respecting the establishment of religion;(b) Compulsory support by taxation or otherwise of religious institutions"¹. Not only is no one denomination to be favored at the expense of the rest, but all support of religious instruction must be entirely voluntary. It is not within the sphere of government to coerce

1.-Cooley: Constitutional Limitations--p.575 (6th ed.)

it. Note further, however, "The American constitutions contain no provisions which prohibit the authorities from such solemn recognition of a superintending Providence as the religious sentiments of mankind inspires and as seems meet in finite and dependent beings. No principle of constitutional law is violated when thanksgiving or fast days are appointed, when chaplains are designated for the army or navy, when legislative sessions are opened with prayer and the reading of the Scriptures, or when religious teaching is encouraged by the exemption of the houses of religious worship from taxation for the support of state governments." Judge Story and other equally high authorities on jurisprudence have recognized the fact of the essentially Christian origin of this nation, of the Biblical basis of much of our Federal constitution, of the Scriptural and religious foundations of our legal enactments; giving a prestige to Christianity and Biblical teaching in no way out of accord with our domestic principles. These facts seem to make the question of religious instruction one of exceeding difficulty both to judge and commoner.

The nine or ten great cases that have reached the state supreme courts have grouped themselves about (1) The question of conscience. (2) the support of a place of worship by taxation or public funds, (3) the misdirection of public funds to sectarian schools, (4) the sectarian nature

1.- Cooley: Constitutional Limitations-p.582. (5th ed.)

of Bible reading per. se, (5) the question of jurisdiction or delegation of authority in matters of school instruction or discipline. Many of the cases involved two or more of the above controversies.

2. The Maine Case.

One of the earliest as well as one of the most frequently quoted decisions is that rendered by the Supreme Court of Maine in 1854.¹ The facts were these: The school committee of Ellsworth had passed an order requiring the schools to be opened with reading from the King James version of the Bible and prayer. A girl, fifteen years of age, asserted that she had conscientious scruples against reading that version, refused to comply with the rule and was, quoting the plaintiff, "maliciously, wrongfully and unjustifiably expelled." Suit was brought to recover damages.

Among other things the plaintiff's counsel claimed:

"1.-That under the constitution of the state the committee had no right to pass such an ordinance. It violates articles I and III of the Constitution."

"2.-That the expulsion of a scholar for refusing to comply with such an ordinance subjects the whole committee to an action in damages."

"3.-That the ordinance establishes a preference of Protestants over Roman Catholics, creates a religious test and excludes a whole class of citizens from the common schools."

1.- Donahue vs. Richards 78 Maine 770.

The articles above referred to, grant perfect freedom of conscience and religious worship to all, forbid any religious test to be applied, or any preference whatever to be given to one sect over another by law.¹

The court decided:

1.-"That the legislature have reposed with the Superintending School Committee the power of directing the general course of instruction, and what books shall be used in the schools; and they may rightfully enforce obedience to all regulations by them made within the sphere of their authority."

2.-"For the refusal to read a book thus prescribed the Committee may expel such disobedient pupil."

3.-"No scholar can escape such requirement on the plea that his conscience will not allow the reading of such a book."

4.-"Nor can the ordinance be nullified, because the Church of which the scholar is a member holds that it is a sin to read the book prescribed."

5.-"That a law is not unconstitutional because it may prohibit what one may conscientiously think right or require what he may conscientiously think wrong."

6.-"A requirement by the Superintending Committee that the

1. "All men have a right to worship Almighty God according to the dictates of their own conscience---No preference of one sect to another shall ever be established by law, nor shall any religious test be applied." Const. of Maine, Art.I, Sec.III.

Protestant version of the Bible shall be read in the public schools by the scholars who are able to read is in violation of no constitutional provision and is binding upon all members of the school although composed of diverse religious sects."

Justice Appleton, in a long, learned and very exhaustive decision handed down the unanimous opinion of the Court. On the question of violation of conscience, he says in substance, "The claim on the part of the plaintiff is that each and every scholar may set up his own conscience as over and above the law. It is the claim of an exemption from a general law because it may conflict with a particular conscience. In so far as it may rest on conscience, it is a claim to annul any regulations of the State made by its constituted authorities. The right as claimed undermines the power of the State; it is that the will of the majority shall bow to the conscience of the minority, or to the conscience of one; thus power ceases to reside in majorities and is transferred to minorities. Nor is this all, while the laws are made and established by those of full age, the right of obstruction, of interdiction, is given to any and all children of however so immature age or judgment."

"The whole matter is, as it should be, under popular control; the remedy for unpopular regulations lies in the election of a new Committee. The minority should submit to

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the will of the many."

3.- The Iowa Case.

The question as to whether the reading of the Bible in the public schools constitutes sectarian instruction within the meaning of the constitutional provisions of many of our western states, and the further question as to whether such reading constitutes them places of religious worship were considered in a case brought before the Supreme Court of Iowa in 1834.¹

The plaintiff, a resident taxpayer, with children in school asked for an injunction against the teachers and school directors of his district to prevent the reading or repeating of the Bible or any part of it and to prohibit the singing of religious songs in school. The lower court refused to grant the injunction and the case was appealed to the Supreme Court. The opinion of this higher tribunal unanimously affirmed the decision of the lower court. In giving the decision of the Court, Justice Adams said: "The plaintiff concedes that under section 1764 of the Code of Iowa, if constitutional, neither the school directors nor the courts have the power to exclude the Bible from the public schools. The provisions of the Statute are in these words, 'The Bible shall not be excluded from any school or institution in the state, nor shall any pupil be required to read it contrary to the wishes of his parent or guardian.' Under this

1.-Moore vs. Monroe 64 Iowa 367.

provision it is a matter of individual opinion with school teachers whether they will use the Bible in their schools or not, such option being restricted only by the provision that no pupil shall be required to read it contrary to the wishes of his parent or guardian. Said section does not conflict with Article I, Section III of the Constitution which says, 'The General Assembly shall make no law respecting religion or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes or taxes or other rates for the building or repairing of houses of worship, or the maintenance of any ministry or minister.'

Section III of Article I was designed to secure the citizens against taxation for religious purposes and not to suppress religion itself; and it does not afford a ground for enjoining religious exercises in the public schools when the burden of taxation is not increased and the plaintiff's children are not required to be present at, or take part in such exercises."

The plaintiff's position is that the school is made a place of worship----that his children are compelled to attend a place of worship and he-----is compelled to pay taxes for building and repairing a place of worship.--It seems to us that if we should hold the school house a place of worship, even conceding the Bible reading complained of to be for the purpose of religious worship, we should put a

very strained meaning on the constitution. The object of the provision is not to prevent the casual use of a public building for offering prayer or other acts of religious worship, but to prevent the enactment of a law whereby any person can be compelled to pay taxes for building or repairing any place designed distinctively as a place of worship. We do not think the plaintiff's real objection is a matter growing out of taxation, since that burden has not been increased,--his real objection is that religious exercises are made part of the educational system into which his children, or made to appear singular, or perhaps subjected to some inconvenience. Since his children are not compelled to attend the exercises. we cannot think these objections of great weight.---Possibly the plaintiff is a propagandist, and regards himself as charged with a mission to destroy the Bible. Whether this is so or not, it is sufficient to say that the courts are charged with no such mission. We think the injunction was properly denied."1

4.-Cases in Illinois.

The constitution of Illinois provides,"No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or place of worship."2

1.-Opp. cit. page 767.

2.-Const. of Illinois Art.II, Sec.7.

Further, "Neither the General Assembly nor any county, city, school district or other public corporation shall ever appropriate or pay any public funds in aid of any sectarian purpose, or to aid or help support---any school or other institution---conducted by any church or sectarian denomination whatever."¹

In the year 1887 there was a case² appealed to the Supreme Court by a plaintiff in St. Clair County, who made complaint that for ten years a certain school had been held in the basement of a Roman Catholic church,---that the teachers were all Roman Catholics---that the directors would hire no others, that a vote to change the site passed the district meeting, but a proposal to bond the district for a new school house was voted down by a majority of eighteen, that the teachers and Roman Catholic pupils are required to assemble daily at 8:30 o'clock to say catechism and mass, that at the close of the forenoon session the Angelus prayer is said by teachers and pupils; from all these things the plaintiff prays the courts to deliver him.

The decision of the Supreme Court in the case is summed up thus:

1.-" The Board of Education may rent, if they see fit, a church building for school purposes, even if it is used for

1.-Const.of Illinois Art.II, Sec.7.

2.-Millard vs. Board of Education, 181 Illinois, 227.

worshiping in by a religious body.

2.-"The free schools of the state are not established to aid any religious body, or assist in spreading sectarian doctrine and no Board of Education or school directors have any authority to use public funds for such purpose.

3.-"The school directors may hire a teacher who belongs to any denomination or church or to no denomination or church as they think best.

4.-"It does not appear that the pupils were required to attend any religious exercise or to receive religious instruction against their wishes, hence there seemed to be no ground for the equitable belief of the complainant. Had the Board of Education required any particular sectarian doctrine to be taught or required any exercise religious or sectarian in character, and the complainant's children were required to receive such religious in the school and conform to the established sectarian exercises, he might have good ground for the complaint."

Under the same provisions, this court decided in 1879¹ that:

1.-"Temporary use of the school house for religious worship is not forbidden by the constitution.

2.-"An incidental use of the school house for religious meetings , not interfering with school purposes, is not in

1.- Nichols vs. School Directors, 23 Illinois, 61.

any sense inconsistent with Article VIII¹ of the Constitution nor is such use an appropriation from any public fund in aid of any church.

3.-" Religion and religious worship are not so placed under the ban that they may not be allowed to become the recipients of any incidental favor whatever from the public bodies of the state."

5.- A Kansas Case.

In this connection -- to show the diversity of opinion on this point--I cite the decision of the Kansas Supreme Court interpreting constitutional provisions similar to those of Illinois in 1875.²

" The use of the public school house for private purposes, such as holding of religious or political meetings, social clubs and the like is unauthorized by law and may be restrained at the instance of any party injured thereby: and this even if a majority of the electors and taxpayers of a district assent to such use, and an adequate rent is paid therefor."²

The Court holds further that one objecting taxpayer or elector, whatever his motives,--foolish, unreasonable or

1.-No state authority "shall---pay from any public fund anything whatever in aid of any sectarian purpose--or to help support---any school--conducted by any church or sectarian denomination whatever."

2.-Spencer vs. Joint School District, 15 Kansas 202.

spiteful though they may be, is sufficient to restrain the use of the school building for any other than strictly authorized school purposes.

6.- The Massachusetts Case.

The questions, What is interference with religious scruples ? and What is sectarian instruction ? are further answered by the Supreme Court of Massachusetts in the now famous case, *Spiller vs. The Inhabitants of Woburn*,¹ decided in 1866. The decision is not more noted for its intrinsic content than for the erudition and legal acumen of the members of the Bench rendering the opinion. Six judges sat upon the case; George T. Bigelow was Chief Justice; Ebenezer R. Hoar, afterward Attorney General of the United States, Charles A. Dewey, Reuben A. Chapman, James D. Colt and Horace Gray, who afterward became Associate Justice of the United States Supreme Court sat with him. The decision was unanimous.

The plaintiff, a girl of thirteen, an inhabitant of Woburn entitled to all of the school privileges of the town,

1.-*Spiller vs. Inhabitants of Woburn*. 12 Allen 127.

was excluded from school for refusing to comply with an order passed by the School Committee that, "The schools of the town shall, be opened each morning with reading from the Bible and prayer, and during the prayer the scholars shall bow their heads. The plaintiff's father objected, principally to the attitude clause of the ordinance, and forbade his child to obey it. The committee thereupon modified the order saying that any pupil might be excused from bowing the head upon the written request of parent or guardian. The father refused to make such request, the girl persisted in disobeying the order and was expelled from school until such time as she saw fit to comply with one of the conditions. This expulsion formed the basis of the action brought against the School Committee.

The plaintiff charged three things:

- 1.---"That the exclusion for the cause assigned was not a reasonable exercise of the power of the School Committee.
- 2.---"That the exclusion was on account of her religious opinions and in violation of the General Statutes C.41, Section 9,"No person shall be excluded from any public school on account of his religious opinions."
- 3.---"The School Committee had no right to require the parent to ask as a favor that which they unlawfully required."

The Court decided:

- (a) That the right of the School Committee to pass all reasonable rules for the government, management and discipline of the schools is clear and unquestionable. "It is equally clear that the Committee of Woburn did not exceed their authority in passing an order that the Bible be read and prayer offered each day in the public schools."
- (b) The bowing of the head is not an act which is necessarily one of devotion or religious ceremony. "It did not compel the pupil to join in the prayer, but only to observe an attitude which was calculated prevent all interruption by avoiding all communication with others during the service." Further even the posture was not required since the parent might pray excuse therefrom.
- (c) This asking excuse was in analogy to the provision of the General Statute which says, "No pupil shall be required to read any particular version of the Bible, whose parent or guardian shall declare he has conscientious scruples against allowing him to read therefrom."¹ It is held this analogy takes away all ground of objection to the reasonableness of the

1.-Mass.School Code Section 72 ff.

order.

This decision, in substance, has been incorporated into the Massachusetts School Code and remains in force today. The code likewise forbids the purchase of any sectarian books for use in the schools, that is, books "favoring any particular sect of Christians."¹

7.- The Cincinnati Case.

Of the earlier controversies on this question, none excited greater popular interest or provoked deeper personal feelings than the case of *Minor et al vs. The School Board of Cincinnati*, in the year 1869.² While the decision does not touch sectarian instruction as such, it clearly states the opinion of the Court in defining the powers of the local school boards. It is significant that it places almost supreme power in the local boards of education, in so far as courses of study or methods are concerned.

For forty years, since 1829, there had been in force in Cincinnati a school board regulation requiring the "reading of the Bible by the teacher and appropriate singing by pupils as part of the daily opening exercises of the

1.-Mass. School Code Section 32 ff.

2.-*Minor et al vs. School Board of Cincinnati*. 23 Ohio, 211.

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school."---The ordinance provided that either the Protestant or the Catholic version might be used at the discretion of the teacher or the request of the pupil through his parent or guardian. In 1869, there was a change in the completion of the board and the following rules were adopted:

- 1.-"Resolved, That religious instruction and the reading of religious books, including the Holy Bible, are prohibited in the common schools of Cincinnati,---"
- 2.-"Resolved, That the regulation----(which) reads as follows: 'The opening exercises of every department shall commence by reading a portion of the Bible by or under the direction of the teacher and appropriate singing by the pupils,' be repealed."

John D. Minor and other taxpayers brought suit in the Superior Court of Cincinnati to enjoin the above resolutions from going into effect; they alleged the following:

- 1.- That many text books containing religious truths and selections from the Holy Scriptures were in use in the schools and would necessarily have to be excluded if the above ordinance held valid.
- 2.- That such religious instruction was necessary for good citizenship.
- 3.- That religion had always been taught and the Bible read in the Cincinnati schools.
- 4.- That many children get no other religious teaching.
- 5.- That the clause in the Ordinance of 1787-"Religion,

morality and knowledge being necessary to the good government and happiness of mankind, schools-----shall be forever encouraged"-requires the state of Ohio to provide for the religious needs of her children.

6.- That the prohibition of such Bible reading interferes with the consciences of those -and there are many- who wish religion taught.

The Superior Court by a vote of two to one granted a perpetual injunction restraining the School Board from enforcing the resolutions against Bible reading. Technically, this ~~made~~ the reading of the Bible a compulsory matter forever.

The case was carried to the Supreme Court of Ohio and the decision of the lower court reversed; the Court simply stating that:

- 1.-"The Constitution of the state does not enjoin religious teaching or require it; nor does it enjoin or require the reading of religious books in the public schools of the state.
- 2.-"The Legislature having placed the management of the public schools under the exclusive control of the directors, trustees and boards of education, the courts have no right to interfere by directing what instruction shall be given or what books shall be read therein."

As a matter of fact, the decision did not determine anything concerning the sectarian nature of the Bible, or its reading as a violation of the rights of conscience. It is

plain that an order by the Board of Education requiring the reading of the Bible would be as valid under this opinion as an order prohibiting such reading. It is noted, however, that Judge Welch in rendering his decision makes a very strong argument to show the impropriety, or practical impossibility, almost, of allowing sectarian instruction.

8.- The Wisconsin Case.

Of the more recent decisions there are four of considerable importance. Two are favorable, one more or less indifferent and one, the well known Edgerton decision of Wisconsin, rendered by Judges Cassoday, Lyon and Orton in 1890.¹ seems practically prohibitive of Bible reading in the schools.

Some of the school teachers of District Number 8, Edgerton, Wis., were accustomed to read portions of the Bible to the pupils at morning exercises; no children who did not wish to hear the reading were required to be present; the Bible was mentioned in the list of text books adopted by the School Board and officially approved by the State Superintendent. Some Catholic parents who objected to their children's hearing the Bible read, requested the Board to stop it. The Board, however, refused to interfere, alleging that they had no authority to do so. The injured party then brought action in the circuit court for a writ of mandamus to compel the Board to prevent any further Bible reading in these schools.

1.-Weiss et al vs. School Board of Dist. No. 8, Edgerton, 76 Wisconsin 179.

When the case was brought before the circuit court, the complainants urged--(1) That being Roman Catholics, indiscriminate reading of the Scriptures was to them offensive and in violation of the rights of conscience guaranteed by the preamble to the Constitution of Wisconsin and the Bill of Rights.

(2)-That such reading is therefore sectarian instruction and in violation of Article X, Section 3 of the Constitution.

Judge Bennett of the Circuit Court in a very exhaustive and able opinion of seventy-five pages decided against the complainant.

The case was then carried to the Supreme Court, where the decision was reversed. Three of the Judges wrote opinions as stated above in which the entire Court concurred. Judge Lyon follows Judge Bennett in the statement that this is the first case to be brought before the Supreme Court of any state involving the definite question of sectarian instruction under a constitution distinctly prohibiting such instruction. For this reason a few quotations in context are given here. The constitutional provisions which the court construed are as follows:

"The right of every man to worship Almighty God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishments or

modes of worship." (Const. Art.I, Sect.18.)

"No religious test shall ever be required as a qualification for the office of public trust under the state---in consequence of his opinions on the subject of religion."(id. sec. 19.)

"The interest of the school fund and all other revenues derived from the school lands, shall be exclusively applied--- to the support and maintenance of common schools in each school district." (id. Art. X, Sect.2.)

The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable, and shall be free to --all children---; and no sectarian instruction shall be allowed therein."(id.sec.3)

The Court held as follows:

1.-That the use of the Bible as a text book and the stated reading thereof in the schools, has a tendency to inculcate sectarian ideas and is sectarian instruction within the meaning of the constitution and the statute."¹

2.-The fact that the children are allowed to withdraw from the room while the Bible is being read; destroying as it does the equality of the pupils and putting the minority to a serious disadvantage, does not remove the grounds of complaint."

3.-"Text books--- founded upon the fundamental teachings of the Bible or which contain extracts therefrom and are for

1.- Section 3, chapter 251, Laws of 1883.

secular instruction, the constitutional prohibition of sectarian instruction does not include, even though they contain some passages from which inferences of sectarian doctrines might possibly be drawn."

4. "Much in the Bible --- cannot justly be characterized as sectarian; there can be no valid objection to the use of such matter in the secular instruction of pupils."

5. "The stated reading of the Bible in the public schools, as a text book may be 'worship' within the meaning of the Constitution."

6. "Consequently such reading may constitute the school a religious seminary within the meaning of the Constitution, Article I, Section 18." (Nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or denominational seminaries.)

On the first point above, Judge Lyon says:

"The question, therefore, seems to narrow down to this: Is the reading of the Bible in the schools---not merely selected passages therefrom, but the whole of it---sectarian instruction of the pupils? In view of the facts already mentioned that the Bible contains numerous doctrinal passages, upon some of which the peculiar creed of almost every sect is based, and that such passages may reasonably be understood to inculcate the doctrines predicated upon them, an affirmative answer to the question seems unavoidable. Any pupil of ordinary intelligence who listens to the reading of the doctrinal portions of the Bible will be more or less

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instructed thereby in the doctrine of the divinity of Jesus Christ, the eternal punishment of the wicked, the authority of the priesthood, the binding force and efficacy of the sacraments, and many other conflicting sectarian doctrines. A most forcible demonstration of this fact is found in certain reports of the American Bible Society of its work in Catholic countries, in which instances are given of the conversion of several persons from "Romanism" through the reading of the Scriptures alone; that is to say, the reading of the Protestant or King James version of the Bible converted Catholics to Protestants without the aid of comment or exposition; in those cases the reading of the Bible certainly was sectarian instruction."

He concludes his opinion in substance: "We most emphatically deny the view that the exclusion of Bible reading from the schools is derogatory to the value of the Holy Scriptures, a blow to their influence upon the conduct and consciences of men, and disastrous to the cause of religion. The priceless truths of the Bible are best taught our youth in the Sabbath school, the church, the social religious meetings, and above all by parents in the home circle.--- The Constitution does not interfere with such teaching and culture. It only banishes religious, theological polemics from the school. It does not do this from hostility to religion, but because the people who adopted it believed that the public good would thereby be promoted. Religion teaches obedience to law and flourishes best where good government

prevails."

This is by all odds the most sweeping and comprehensive decision ever rendered on the questions involved, and it has had the effect of silencing the voice of prayer and the Scriptural morning exercise in practically all public institutions of learning in Wisconsin. It is interesting to note that the laws of Wisconsin 1905 provide that, "All persons committed to a reform school, prison, parental, or industrial school or home for dependent children----shall be allowed spiritual advice or teaching from a clergyman of his particular church or denomination,----given in the institution or in such a way as will secure the free exercise of religious liberty." Further the keeper of the prison "shall provide to each person so desiring it, at the expense of the county, a New Testament or Bible to be used at proper seasons during confinement."¹

One is inclined to ask, in the light of the above decision whether the state is not supporting houses of religious worship and promulgating sectarian doctrine in its prisons and reform schools? Verily, our very consistency in the matter would manifest our absurdity.

9.-The Michigan Case.

The Michigan case in 1898², was over a controversy as to the use of a book entitled "Bible Readings", based on the Holy Scriptures, which the Detroit Board of Education had

1.-Laws of Wisconsin, 1905, Chapter 396.

2.-Pfeiffer vs. Board of Educ. of Detroit. 118 Mich.560.

introduced into the city schools. The circumstances of the controversy appear below in the syllabus of the decision. The opinion is especially worthy of note as being based on the common custom or law prevailing at the time of the adoption of the constitutional articles alleged to be violated. The Judges quote many legal authorities and precedents in support of this mode of procedure. Four Judges concurred, one dissented in the following decision:

- 1.-"A constitutional provision could not mean one thing at the time of its adoption and another thing at a subsequent time; hence any provision is to be construed with reference to the state of the law at the time of its adoption, and to the practices and usages then prevailing.
- 2.-"Judicial notice may be taken of the practice which has prevailed for many years in the public schools of reading the Bible and offering prayer in the presence of the pupils.
- 3.-"The use in the public schools, for fifteen minutes at the close of each day's session, as a supplemental text book on reading, of a book entitled "Bible Readings", which is largely composed of extracts from the Bible----where the teacher is forbidden to make any comment upon the matter therein, and is required to excuse from that part of the session any pupil upon application of parent or guardian, is not a violation of the state constitution, Article IV, Section 41, prohibiting the legislature from diminishing or enlarging the civil or political rights or capacities of any

person on account of his opinions or beliefs in matters of religion."

4.-"Nor is it a violation of Art.IV.,Section 40, providing that no money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, nor shall any property belonging to the state be appropriated or used for such purposes."

5.-"Nor is it a violation of Article IV Section 39, providing that the legislature shall pass no law to prevent any person from worshiping Almighty God according to the dictates of his own conscience or to compel any person to attend, erect or support any place of religious worship or to pay tithes or taxes for the support of ministers of the gospel or teachers of religion."

On points one, four and five, the Wisconsin court took a diametrically opposite position. Indeed the entire opinion is put on a different basis in Michigan. It is significant, when we remember that the Wisconsin constitution, in many respects, follows somewhat closely that of her sister state.

10.-The Nebraska Case.

Next to Wisconsin, one of the most important and far reaching decisions was that handed down by the Nebraska Supreme Court in 1903.¹ The facts upon which the case was based are as follows: One Freeman, a Catholic, who had several times

1.-State vs.Scheve 65 Neb. 853.

before interfered in like manner, opposed the reading of the Bible and other religious exercises conducted in one of the schools of District Number Twenty-one, Gage County, Nebraska where his children attended school. Apparently he was the only opponent and his motives for opposition were much questioned. The teacher, a very pious young woman, having received the hearty approval of the directors, was in the habit of reading a portion of the Bible, singing with the pupils a hymn and calling upon them to stand and remain in an attitude of devotion while she offered prayer. She emphatically asserted that she did this as an act of religious worship without which she could not conscientiously begin the day. She testified that she read whatever portion of Scripture she thought best and prayed as she saw fit. The complaining Freeman pupil was not required to participate, and nothing was said about his being present. The State Superintendent, when appealed to by the Board, approved their position (Bible reading had been the rule for a great many years) and they refused to interfere with the teacher. Meantime Mr. Freeman brought action in the lower court and not obtaining the relief sought, finally appealed the case to the Supreme bench under the title State ex rel. Freeman vs. Scheve.¹

The Court rendered the following opinion, one of the judges dissenting:

"Exercises by a teacher in a public school,

1. State vs. Scheve 65 Nebr. 853. 65 Nebr. 876.

during school hours and in the presence of her pupils, consisting of the reading of passages from the Bible and in the singing of songs, hymns and offering prayer to the Deity in accordance with the customs, doctrines, beliefs or usages of sectarian churches or religious organizations, is forbidden by the constitution of this state."¹

Under the law of Nebraska the respondents were given forty days to file a motion for a re-hearing. The motion was duly filed, but over-ruled, and Chief Justice Sullivan in denying the re-hearing, handed down the final decision in the case. The ground is so fully covered that the syllabus of the decision is quoted almost in its entirety.

"1.-Natural right of Conscience: State Constitution. The right of all persons to worship Almighty God according to the dictates of their own consciences is declared by the constitution to be a natural and indefeasable right.

"2.-Duty of Government to Teach Religion. There is nothing in the constitution or laws of this state, nor in the history of our people upon which to ground the claim that it is a duty of government to teach religion.

"3.-Compulsory Attendance on Religious Exercises. Enforced attendance upon religious exercises is forbidden by the constitution, and pupils in the public school cannot be required to attend or to join in such services.

"5.-Teacher. A teacher in a public school, being vested with

1.-Opp. Cit. N.W. Reporter, Vol. 91, p. 846.

2.-State vs. Scheve 65 Neb. 253.

a general authority over his pupils, his requests are virtually commands.

"6.-Objection of Parent. It is immaterial whether the objection of a parent to his children attending and participating in a religious service, conducted by a teacher in the school room, during school hours is reasonable or unreasonable. The right to be unreasonable in such matters is guaranteed by the constitution.

"7.-Use of the Bible. The law does not forbid the use of the Bible in the public schools. It is not proscribed either by the Constitution or the Statutes; and the courts have no right to declare its use to be unlawful because it is possible or probable that those who are privileged to use it will misuse the privilege by attempting to propagate their own peculiar views or opinions.

"8.-The point where the courts must interfere to prevent the use of the Bible in a public school is where the legitimate use has degenerated into abuse,---where a teacher employed to give secular instruction has violated the constitution by becoming a sectarian propagandist.

"9.-Bible Reading: Sectarian Instruction. Whether it is prudent to permit Bible reading in the schools is a matter for the school authorities to decide; but whether the practice has taken the form of sectarian instruction is a question for the courts to determine upon evidence.

"10.-It will not be presumed in any case that the law has been violated; every alleged violation must be sustained by competent proof."¹

It is worth while noting that this case was decided largely on the strength of the opinion rendered by the Wisconsin court in the Edgerton case, previously considered.

The present State Superintendent, in replying to the questionnaire, previously referred to, states that Bible reading is general in the public schools of Nebraska, "The Supreme Court having decided favorably in the matter," and that popular opinion is much in favor of such reading. Evidently the effect of the decision has been a tendency to the legitimate use of the Bible in the Nebraska public schools.

11.- The Kansas Case.

The last recorded decision on Bible reading is that of the Kansas Supreme Court in 1904.²

The General Statutes provide that in all cities of the first class, of which Topeka is one, "No sectarian or religious instruction shall be allowed in the public schools of such cities; but nothing in this section shall be construed to prohibit the reading of the Holy Scriptures therein."³

A teacher in one of the Topeka schools was accustomed to read some literature, such as Seton Thompson's animal

1.-State vs. Scheve 65 Nebr. 878.

2.-Billard vs. Board of Educ. Topeka. 69 Kansas 53.

3.-Kansas General Statutes (Edit. 1901) Section 6284.

stories, to repeat the Twenty-third Psalm and the Lord's prayer and possibly to have the children sing each morning, to prepare them for the work of the day.--In all the exercises took up about fifteen minutes of time. There was in the school, one, Philip, whose father objected to the religious part of the exercises, He complained to the school board, alleging that while Philip was not required to participate in the exercises, he was (1) required to desist from his regular work, (2) to remain quiet while the exercises were going on; that (3) he was conscientiously opposed to such exercises which are (4) a form of religious worship. The Board in the interests of peace and conscience, allowed Philip to absent himself from the exercises. He remained away for some time, but finally returned and made his presence felt by creating much disturbance and disorder. After repeated admonitions on the part of the teacher and his positive refusal to remain orderly and quiet, he was expelled until such time as he should express his willingness to conform to the rules of the school, and the Board so notified his parents. The Plaintiff at once instituted action against the School Board on the ground,-

1.-"That such daily repetition of Scripture and the Lord's prayer is a form of religious worship to which the plaintiff and his son are conscientiously opposed.

2.-"To conduct such an exercise is a violation of the Bill of Rights 'No control of or interference with the rights of conscience shall ever be permitted.' (Const. of Kansas)

3.-"It also violates the Constitution, 'No religious sect or sects shall ever control any part of the common school or university funds of this state.'¹ And the further prohibition in section 6284 of the General Statutes given above."

The lower court-gave judgment for the defemdant. The case was carried to the Supreme Court, who rendered a decision embodied in this "Syllabus of Opinion"²

The Lord's Prayer and the Twenty-Third Psalm Allowable,--
A public school teacher, who for the purpose of quieting her pupils and preparing them for their regular studies, repeats the Lord's prayer and the Twenty-third Psalm, without note or comment, in which the pupils are not required to participate, is not conducting a form of religious worship or teaching religious or sectarian doctrine."

Quoting from this decision,"Every pupil who enters school has a right to expect and the public a right to demand of the teacher, that such pupil shall come out of the schools with a more accurate sense of right and wrong, higher ideals in life, a more independent and manly character.-- a higher conception of his duty as a citizen and a more laudable ambition in life than when he entered. The noblest ideals of moral character are found in the Bible. To emulate these is the supreme conception of citizenship. It could not therefore, have been the intention of the framers of the

1.- Constitution of Kansas: Art. VI, Sec.8.

2.- Billard vs. Board of Education, 69 Kansas 53.

constitution to impose the duty upon our legislators of establishing a system of public schools where morals were to be inculcated, and to exclude therefrom the lives of those persons who possessed the highest moral attainments.-- We are convinced there was not the slightest effort on the part of the teacher to inculcate any religious doctrine ---. The pupils who desired gave attention and took part; those who did not were at liberty to follow the wandering of their own imaginations. The only demand made upon them was that during the exercises they should demean themselves in their usual orderly manner."¹

"The judgment of the court is confirmed. All concur."

Thus the final word is decidedly in favor of simple Scriptural exercises at the opening of school.

12.-Other Cases.

There are few other cases which have reached the State Supreme Courts bearing on these questions; ---there are none which set forth any new principles. Of those apparently allowing Bible readings in the schools may be mentioned *Mc Cormick vs. Burt et al.*, 95 Illinois, 283----decided that a rule by the school committee authorizing the "teacher to read as an opening exercise every morning, not occupying over fifteen minutes, a chapter from King James' translation of the Bible," is certainly a reasonable one.

1. Opp. cit. , 68 Kansas, 53.

Ferrieter vs. Tyler, 48 Vermont, 444.

State Superintendent says: "This case decided that the Bible might be read without note or comment, at the opening exercises of the public schools."¹

Apparently the decision is that pupils can rightfully be expelled from school if they absent themselves from school to attend church on Holy Days, even when they are commanded to do so by the priest or minister.

Opposed to the use of such exercises is the case of State of Nevada vs. Hallock, 16 Nevada, 373. In this the decision was adverse to the use of the Catholic Bible.

1.- Correspondence, State Supt. of Vermont. Feb. 1906.

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VII. OFFICIAL OPINIONS by ATTORNEYS-GENERAL and STATE
SUPERINTENDENTS.

The silence of the laws on the points discussed has led to a number of official opinions, which hold as the dicta of the states rendering them---usually subject to reversion by the Supreme Court. New York, however, clothes her School Commissioner with supreme and final authority in matters relating to the common schools -- subject only to definite legislative action.

New York: In a pamphlet issued by Commissioner Draper, November 1904, he quotes as giving his own opinion, the decision of Superintendent Ruggles, dated May 1884, on "Religious Exercises in the Public Schools" and the decision of Superintendent Abram Weaver issued in 1879.

Superintendent Weaver:" For the religious training of pupils the state does not provide and with it does not interfere. ---There is no authority in the law to use, as a matter of right, any portion of the regular school hours in conducting any religious exercise at which the attendance is made compulsory. On the other hand, there is nothing to prevent the reading of the Scriptures or the performance of other religious exercises----with such pupils as may attend voluntarily or by the direction of their parents or guardians, if it be done before the hour fixed for opening school or after the dismissal of the school. The action of the Board of Education

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of Long Island City in directing the reading of a portion of the Bible as an opening exercise, during school hours and in excluding pupils from the school on the ground of declining to be present at the reading, has been without legal warrant."

Superintendent Ruggles:"In our public schools all religions and sects share the burden equally and all have equal rights to the fullest enjoyment of all the privileges and benefits arising therefrom. If it were possible to devise some limited measure of religious instruction upon which these diverse sects and classes could harmonize, it would be a gratifying result. But this is manifestly impracticable and impossible. The only alternative therefore, to secure to all absolute equality of right in matters of religious predilection must be, however reluctantly the the conclusion is arrived at, to exclude religious instruction and exercises from the schools during school hours.¹

In Iowa the Department has ruled, in addition to the Supreme Court decision on the matter,"Neither the School Board nor the electors can dictate to the teacher a given course in respect to reading from the Bible; it is a matter of individual option with the teacher, she being restricted only by the provision that no child shall be required to read it contrary to the wishes of parent or guardian."²

In Utah: State Superintendent Nelson in an official

1.-Com. A. S. Draper:: Correspondence Jan. 1906.

2. Supt. John F. Pines

letter, dated December 1904, goes even farther than the Commissioner of New York in limiting the religious exercises that may lawfully be given in a public schoolhouse. By official inquiry of county and city superintendents he learned, "First, that religious classes are conducted in a large number of schoolhouses throughout the state. Second, that these classes are held immediately after school has closed for the day---and not infrequently the regularly employed teacher of the school is teacher also of the religious classes." After calling attention to the clauses of the Constitution declaring, "The common schools of the state shall be open to all, and be free from sectarian control,"¹ and the statute, "No atheistic, infidel, sectarian, religious or denominational doctrines shall be taught in any of the district schools of this state,"² he says, "Even the propriety of merely reading the Bible has been called in question, because readers can read and have read their peculiar religious views into Scriptural quotations.---The religious teachings may be of the most wholesome and uplifting character, yet in a country like ours, to hold the pupils after school hours for the purpose of inculcating the ----doctrines of any religious creed must, of necessity, be objectionable to the people of the community holding other religious views,---I am of the opinion, and you are hereby advised, that the religious class work when conducted in a public school building is in violation of the spirit of the Constitution and Statutes of the

1.- Const. of Utah Art.X Sec.1

2.- Revised Statutes of Utah 1898: Section 1848.

In the above ruling it is easy to read the readiness with which religious teachings and exercises ~~whatever~~ their intrinsic value, degenerate into abuse in the hands of a religious fanatic or propagandist.

State of Washington: In 1892, Attorney-General Jones rendered a detailed opinion, at the request of the State Superintendent, based very largely on the Wisconsin decision. He decided that under the constitution of Washington "Reading the Bible in the public schools is sectarian instruction." Thus such stated reading is forbidden by the constitution of that state. "If the word religion as used in the Bill of Rights includes the religion of the Catholic, the Protestant and the Hebrew, and each of them is a religious sect within the meaning of the constitutional provision, the conclusion is irresistible that the school is subjected to sectarian influence in which religious exercises are conducted by the reading of the religious book on which the doctrines of one or other of these religious sects are based."² This is the most prohibitive decision yet filed in any state. It goes even farther than the Wisconsin decision upon which it is based.

Indiana: Under Section 245 of the latest edition of the school laws of Indiana, which reads, "The Bible shall not be excluded from the public schools of the state," a long depart-

1.-Supt. of Schools Utah, Official Letter Dec. 1904.

2.-Report of Supt. of Pub. Instruction Wash. '92 p 308.

ment note or decision is placed. The substance is about as follows:

"The continuance in these nurseries of our future citizens (the public schools) will as surely mark the zenith of our State's prosperity as its exclusion would prove the precursor of her decline, the herald of her shame.--An examiner should not license an immoral person, nor one who is a scoffer at the teachings of the Bible and things sacred.--- Our law wisely leaves the whole matter of Bible reading and prayers to the good judgment and conscience of the teachers. It cannot be made a matter of contract. It is not even implied that the Board can enforce a rule for devotional exercises in the schools, since such rule might be opposed to the constitutional provisions guaranteeing rights of conscience. Clearly, the statute and the Constitution authorize the reading of the Bible, and prayer in the schools, but it should be done by choice and not compulsion; the opinion of anyone, in connection with the school, of whatever religious faith, should be respected and held inviolate."

Superintendent Cotton: "The Bible is not to be taught according to the belief of any sect or creed; but it may be read and commented on in general terms, which do not conflict with any religious orders."¹

It seems safe to say, after a careful study of the situation in all the states, that more than two thirds of

1, -School Law of Indiana, Chap.XV, pp. 204-205.

them would be willing to join with Indiana in the greater part of the above utterances.

Illinois: The only decision made by the department of Education in this state was made by Superintendent Bateman in "School Laws and Decisions" about 1875. The present Superintendent quotes it as the current opinion.

Superintendent Bateman goes into the matter very fully albeit very rationally, saying in substance that religion is an entirely voluntary matter, and religious instruction can in no case be compelled or prohibited. The entire principle rests on the fundamental and inviolable rights of conscience. Quoting,—"The Constitution of the state neither requires nor forbids the reading of the Bible or prayer or any form of religious worship or devotional exercises in the public schools, and the school laws are silent on the subject. The spirit of the Constitution is permissive, not mandatory.---The largest freedom is granted to teachers and school directors, subject only to the paramount rule that no human power (authority) can in any case whatever control or interfere with the rights of conscience.---While it is most fit and commendable for a teacher to open his school with prayer and reading from the sacred Scriptures, he may, nevertheless decline to do so, ---and for so doing he cannot be discharged.---On the other hand if a teacher feels it to be his duty to read the Bible or offer prayer at the opening of school, it is his privilege to do so, even if contrary to the wishes of the directors.

And for so doing he cannot be discharged or molested:--it is a sacred personal right of which he cannot be deprived. All of the scholars who choose or whose parents approve may be present and participate in the reading and worship. In case of dispute----the directors might, it is held, require that the devotional exercises take place before or after the regular school hours.---No scholar can be required to read the Bible in school as a religious exercise or to participate in any form of religious worship or devotion contrary to the wishes of parent or guardian.---The above holds in like manner in regard to text books and religious instruction in any form.

"Our laws are blank on these points, but there can be no doubt that the fundamental spirit of the Constitution if expressed in statutory form would read like the California law ----"No books, tracts, papers, catechisms, or other publications of a sectarian or denominational character shall be used in any public school,---nor shall any sectarian or denominational doctrine be taught therein."¹

Minnesota: The Attorney-General of Minnesota bases his decision on the Wisconsin Supreme Court opinion--- although the Bible is widely read both in the common schools and practically all the higher state institutions.

Missouri: In Missouri the State Superintendents have long held" that the Bible may be read, subject to the control and direction of the local school board."²

- 1.-Bateman: School Laws and Decisions, pp.125 ff.(1887 ed).
- 2.-Supt. Carrington: Correspondence Feb. 1906.

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14-Maryland: Here the State Board recommends Scriptural reading in all the schools.

The decisions and opinions of other states are sufficiently noted in the tabulated summary, Table III.

General Conclusions from Legal Decisions.

While it is strikingly apparent that the opinions are by no means harmonious, it is also evident that all have in mind the general principle that the schools must be conducted so that equal opportunity shall be given to all children of every sect and condition, and that the conscience of none shall be interfered with in matters of religion. The only exception to this attitude is found in the Maine decision, first mentioned. As to defining "interference with conscience," I can find no judge who has had the temerity to set forth a comprehensive definition.

2. With the exception of the Maine court, it seems to be unanimously held that no pupil can be required to attend or participate in any religious exercise contrary to the wishes of his parent or guardian. In general, where there is a Bible reading rule, this difficulty is obviated by excusing the pupil from the room during the exercise. The Wisconsin and Nebraska courts have held this method to be invalid and contrary to the principle of equality of opportunity and of our free democratic institutions.

3. While religious education and instruction is

quite universally conceded to be essential to good citizenship and the social efficiency of the individual, and while morality, virtue and Christian ideals are required to be taught in many public schools, and atheism, immorality and infidelity are distinctly forbidden, it seems to be the growing opinion that the teaching of religion does not belong uniformly to the State, but rather to the home and the religious society. There is still some dissent from this view, not only in the East, but in some of our western states. As a notable instance, witness the present movement on foot in South Dakota.

4. This attitude grows out of the fact that religion cannot yet, perhaps never can be divorced from sectarianism and denominationalism.

5. Whether the Bible as a whole may be regarded as a sectarian book has not been ultimately decided. Washington, Wisconsin, California, Texas, and Arizona so regard it. That parts of it may be so read or taught as to become sectarian doctrine seems to be universally conceded; but that all parts at all times are sectarian no court has yet decided. Consequently Bible reading per se has never been forbidden by any state. The nearest approach thereto is the opinion by district attorney Jones of (state of) Washington.

6. The ultimate finding as to the sectarian character of the reading or religious exercise seems finally to be left with the courts (Maine, New York and Ohio are exceptions); but in the great majority of states, immediate jurisdiction

in this matter is tacitly or by implication given to the local school authorities or to the teacher. In New York appeal may be taken to the State Commissioner, but in Maine, Ohio and Oregon, at least, the only method of relief is the election of a differently minded School Board. In California the entire school system is in the hands of the central state authorities. Local option has nothing to do with the subject matter of instruction.

7. The New York Commissioner's decision is directed simply against compulsion in attendance on religious exercises in a public school, and the use of the regular school hours for such purpose in the face of any objecting patron.

Curiously enough, we have opposed to this the latest provision from the revised charter of Greater New York: "No sectarian books shall be used----but nothing herein shall authorize the Board of Education or the School Board of any borough to exclude the Holy Bible ----from any school.--The Board of Education is competent to decide what version shall be read."1 And the By-laws, dated 1904, which require, "All schools under the jurisdiction of the Board shall be opened daily with reading from the Holy Scriptures without note or comment."2

The fact that New York is the most cosmopolitan city in the world, with pupils of every religion and sect and doctrine in its schools in great numbers makes this statement

1.-City of New York, Revised Charter 1905: Title IV Sec.1151.
2.- " " " " By-laws, Section 44--No.3.

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very interesting and significant. This naturally leads to the remark, based on a careful study of the cases at law, cited above, that,-

8.-In every controversy- except that of Cincinnati- the case was based on the alleged injury to the children of some very few Roman Catholics (or Protestants in the Illinois case) whose consciences were wounded by the reading of a version of the Bible not authorized by their church. In some instances these were chronic complainers, notorious in the community as mischief makers. The point is this,- in no instance recorded have the Jews, Greeks or other vitally opposed bodies offered objection to the Scriptural reading.

9.- It does not seem to be consistently held that the mere Bible reading in school for a few minutes daily or even the temporary use of a school building for a religious meeting constitutes such building a place of worship within the meaning of most of the state constitutions. Two courts have decided that it did so constitute a school house against at least three who have held otherwise. At any rate this seems a very strained meaning to put upon the constitutional provisions against public support of "places of worship".

Table III

**State Supreme Court and Official Decisions
with Reference to Bible Reading in Public Schools.**

TABLE III.

State	Supreme Court and Official Decisions as to Bible Reading	Jurisdiction Vested in
Maine	Sup.C.(Donahue v.Richards, 78 Me.,179) 1854.--Bib.not a sect.bk.Can be req'd to be be read in face of parent's protest.Sch. B'd.final authority as to instr.and dis- cip. Individ.conscience can't set aside law.	Local B'd. of Educ.
Vermont	Sup.C.(Ferriter v.Tyler,48Vt.,444) Pupils may be expelled for absence fr.sch. to attend church."Also decided Bib.of any version may be read,no comment,subject to rules of Frud. Com."-State Supt.(1906)	Local Board
Massachusetts	Sup.C.(Spiller v.Inhab'ts of Woburn,12 Allen,127)1868.-Bib.reading may be req'd and pupils to bow their heads unless ex- cused on written request of parent.Re- fusal to comply means expulsion.	Local Board
New Hampshire	No Decisions	Local B'd.
Connecticut	Sup.C.(27 Conn.,503) Sch.house cannot be used for relig.purposes if taxpayers object.	Local Board
Rhode Island		Teacher and district
New York	Supt.Weaver:Official decision,1872.-Expul- sion of pupil for non att'dnce at relig. morn'ex's.or Bib.read'g not lawful.Bible read'g with optional att'dnce permissible if no objection. -Supt.Ruggles(1884):Un- der objection Bib.read'g and relig.instr. must be excluded during reg.sch.hours. Com.Draper(1904): Sustains the above.	Local B'd. first.Fin- ally rests with State Commission- er.
Pennsyl- vania	No Supreme Court decisions .	Local Board
New Jersey	No Decisions	Teacher and local B'd.
Dela- ware	No Decisions	Teacher

State	Supreme Court and Official Decisions as to Bible Reading.	Jurisdiction Vested in.
Mary- land	No Decisions	Local Board
Virgin- ia	State Supt.: Decision (1905). - Bible may be read without comment. Att'dnce at or participation in any relig. exercise cannot be required.	Local Board Courts final
West Virgin- ia	Sup. C. (1898). - Divided court, hence no decision. Court stood two to two. Atty. Generals' opinions conflicting.	Local Board or teacher
North Carolina	No Decisions	Local Board or Co. B'd.
South Carolina	No Decisions	No answer
Georgia	No Decisions	"Probably local Board"
Florida	No Decisions	Not stated Prob. Co. B'd.
Alabama	No Decisions	No law governing
Missis- sippi	No Decisions "No issue ever raised."	No answer
Louisia- na	No Decisions found.	Parish B'd. Appeal to State Board
Texas	Ruling, - Sch. Law, p. 8 (Ed. 1901): <u>Sect. sch.</u> Any sch. in which sect. instr. is given di- rectly or indirectly in sch. hrs. or at any time under direction of any teacher of such school.	Local Trustees
Arkansas	No Decisions	No law governing
Tennes- see	State Supt. Report (1906): Bible may be read but no sect instr. in any pub. sch.	Local Board
Ken- tucky	No Decisions	Teacher and local Board

State	Supreme Court and Official Decisions as to Bible Reading	Jurisdiction Vested in
Ohio	Sup.C.(Cin.Board of Ed.v.Minor,23 O., 211)1869.-1. Courts have no right to in- terfere with sch.boards in det.whether or not relig.instr.shall be given. 2. State does not prescribe that relig. shall be taught in public schools.	Local Board
Indiana	Dep't.Decis.-Sch.Law,p.203(Ed.1904): Bib.read'g rule Can't be enforced by sch.boards. Bib. should be taut as a moral class bk.may be read and commented on in gen'l terms not in conflict with of any religious orders.	"The good judgment and conscience of teacher"
Illinois	Sup.C.(McCormick v. Burt, 95 Ill., 263). seems in favor of compelling attention to relig.exercises at opening of sch. Supt.Bateman,Sch.Laws and Decisions: Sch.officers have no control over relig. ex's.either to prohibit or command.No pupil can be required to take part.	"Probably in local Board" Bateman: Teacher the sole judge."
Michigan	Sup.C.(Pfeiffer V.B'd.of Ed.of Detroit 118 Mich.,560)1898.-Book called "Bible Readings" may be used if pupils not req'd to attend or take part contra written request of parent or guardian.	locally, court finally.
Wisconsin	Sup.C.(State v. Dist. B'd. No. 8, Edgerton 76 Wis., 177) 1890.-1. Bib. read in sch. without restrict'n, as text bk. is sect. instr. 2. Much in Bib. is not sect. Such matter may be used. State Bib. read'g is sect. worship; makes sch. a place of worship.	Courts fin- ally.
Minnesota	Atty. General: Follows Wisconsin decis'n	No Law, prob- ably teacher
Iowa	Sup.C.(Moore v. Monroe, 64 Ia., 367) 1884. 1. Bib. may be read at option of teacher but no child can be req'd to read contra wishes of parent. 1. Stated Bib. read'g at morn. ex's doesn't make sch. place worship	Courts con- true law, teacher de- cides lo- cally.

State	Supreme Court and Official Decisions as to Bible Reading	Jurisdiction Vested in
	Dept. Decision: Bible may be read ; Sch. Board has control of the matter.	Local Board
4 Kansas	Sup.C. (Billard v. B'd. of Ed. of Topeka, 69 Kans., 53) 1904. - Lord's Prayer and 23rd but note Psalm allowed, no comment. Such morn. ex's. state law. not relig. worship nor relig. or sect. instr.	Local Board
6 Nebraska	Sup.C. (State v. Scheve, 65 Neb., 876) 1903. Local Board 1. Bib. may be read, but enforced attendance of pupils prohibited. Courts con- 2. Sch. B'ds decide as to prudence of Bible true law. reading; courts decide whether such read- ing has become sect. instr. in each case.	
South Dakota	No Decisions	Teacher
North Dakota	No Decisions	Local Board
Montana	No Decisions reported. State law forbids. No answer	
Wyoming	Relig. instr. forbidden by const. of state District Board "No decisions ever asked." State Supt. '06.	
Idaho	State Supt. - Report, 1898: "State Law which forbids relig. instr. forbids bible also"	No answer
Colorado	State Supt., Report of 1902, p. 178. - In silence of state law, Dist. Boards have right to specify regarding practice of Bible reading in the public schools.	District Boards
Utah	State Supt., Official Letter, 1904. - Relig. class work in pub. sch. buildings is prescribed a violation of State Const. Even Bib. reading has been called in question, since it may become sect. instruction.	No legal action

State	Supreme Court and Official Decisions as to Bible Reading.	Jurisdiction Vested in
Washington	Atty. General Jones, State Supt's Rep. for 1891, p. 308. - Opinion adverse to all relig. exercises, including Bib. reading in any form in the pub. schools. Bib. a sect. book. Based on Wis. decision.	Courts finally.
Oregon	Dept. Decision, Report of State Supt. for 1902, p. 83. - Bible may be read. Rule may be enforced by excluding refractory pup. from sch. Remedy or relief lies in elec- tion of a new sch. Board. Laws of '87, p. 83: Decis. on sch. law, - Suit able relig. ex's is Bib. and Lord's Prayer	Local Boards
California	Dept. Decision, - No relig. observances of any kind are authorized in pub. schools. law governs Such practice is prohibited.	State
Nevada	No Report obtained.	
Arizona	No Decisions	Legislature
New Mexico	No Decisions	Legislature
Oklahoma	No Decisions	No Pro- vision

1. Response to inquiry, Jan. 1906.

VIII. JURISDICTION in the MATTER of BIBLE READING.

In answer to the question, "In whom is jurisdiction in the matter of religious instruction and Biblical reading in the schools vested?", a variety of replies was received from State Superintendents. The preceding table, compiled from these replies and the School Codes of those states from which no answer was received, plainly exhibits great diversity of procedure. A number of states have no laws governing the matter except as implied in the general powers delegated to school boards or teachers with reference to the control and discipline of pupils and the formulation of courses of study. In some states the matter is tacitly left with the teacher as an affair of conscience that cannot be touched either by prohibition or command; in several the courts have fixed the responsibility. Unless as just noted in Chapter VIII, there is little question that the final determination in any disputed case is lodged in the courts. Immediate decision is usually a local prerogative.

On this point, that of immediate or final jurisdiction, the replies showed some confusion; a few took pains to distinguish between "local" and "final" authority; one stated that in some instances the teacher, in most, the school board and in a few cases the courts decided the question of Bible reading. Several superintendents who answered the other questions, failed to respond to this one

Summarizing the data tabulated under this topic in Table III, these facts may be noted:

1. The report shows that no information was obtained from five states and Indian Territory.

2. Five states report that they have no laws governing the matter.

3. In twenty eight states the School Board has some jurisdiction, immediate, final or conjointly with the teacher or the school district.

4. In Florida and perhaps North Carolina, the question, if it should ever arise, would probably come within the authority of the County Boards of Education.

5. In four states the teacher has the controlling voice.

6. In the territories of Oklahoma and New Mexico the legislature is final, and in California the state law governs all matters relating to the control and administration of the public schools.

7. Wisconsin and Washington report the "courts have jurisdiction finally".

8. Louisiana, Maine, Michigan, Nebraska and New York provide for appeal, either to the State Superintendent or the courts in case of controversy. Undoubtedly this appeal is tacitly implied in almost all states.

IX. CONCLUSIONS.

The results of the inquiry have already been summed up. Keeping these in mind, let us return to the three questions propounded at the outset and see how explicitly they have been answered by the survey. First, What is the legal attitude of the states toward religion and religious instruction ?

To this question our study has been able to give no definite or categorical answer. Every chapter has shown that both in legal aspect and general practice the states come far short of uniformity in this matter. Even the courts have failed to agree on the discrimination between "sectarian teaching", "religious exercise" and "religious instruction". And after all is said, the fundamental difficulty is one of definition. It is universally agreed that religious sects shall not control any part of the school funds nor shall the sectarian schools receive public aid; it follows necessarily that schools wherein sectarian instruction, or, we may add, religious instruction of sectarian bias is given are beyond question sectarian schools and cannot receive public support. Hence it may be regarded a settled policy to forbid any and all sectarian instruction in American public schools.

On one other point there is substantial agreement. The states not only tolerate, they encourage religion and religious ideals. Furthermore these ideals are essentially Christian. Every supreme court decision I have examined takes

occasion to assert that there is on the part of the state no antagonism to Christianity or the Holy Bible, nor is any such implication intended on the part of the court. Many decisions speak of the priceless and essential spiritual truths of the Scriptures and the necessity for impressing them upon the hearts of future citizens. The Bible itself is constantly spoken of in most reverent terms as the fountain of religious truth; a book whose characters represent the embodiment of noble, pure and righteous ideals and whose teachings make for the highest moral good.¹ Wherever mentioned, infidel and atheistic teachings are prohibited.

But the distinction between religious and sectarian is not definitely drawn. No states are more insistent on the prohibition of sectarian doctrines than Massachusetts and New Jersey, yet both sanction "religious" exercises in their schools, Massachusetts requiring the reverent use of the Holy Bible. In Idaho or Wisconsin this would be regarded illegal sectarian instruction. It has previously been pointed out that practically all of the group of states lying west of a line drawn south from the boundary line between North Dakota and Montana, in practice, identify religious instruction and sectarianism; the middle group are more or less divided in opinion, and favor leaving the question to local option; the eastern and southern states, in general, discriminate between sect differences and religious truth, 1.- See Wisconsin and Kansas Sup. Court decisions, Chap.VIII

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excluding the former only. Nor is there a clear distinction made between moral or ethical teaching and religious instruction. The reason is not far to seek: in a Christian commonwealth, and taught by Christian teachers it is not possible to inculcate moral truths on any other than a religious basis, ultimately resting on Biblical doctrines. Salt Lake City, for example, that really prohibits religious teaching or exercises, has precisely the same rule as Trenton, New Jersey, in all whose schools the Bible is reverently read with a sincere religious motive: "The teachers shall endeavor ---to impress upon the minds of their pupils the principles of morality and virtue, a sacred regard for truth, love to God, love to man, love of country, sobriety, industry and frugality. But no teacher shall exercise any sectarian influence in the schools."¹ The entire group of Rocky Mountain states² that legally prohibit religious instruction have similar statutory provisions regarding moral training in their schools. They repudiate the idea that it is "religious".

The almost unavoidable tendency of teachers to cast religious truths in a sectarian mould is the central cause that has led to the wholesale exclusion of everything religious from the common schools of these states. Naturally the controversy has been centered in Bible reading, for the reading of the Scriptures and prayer have been the two

1.- Rules of Bd. of Educ., Salt Lake City: 1905. Trenton, N.J. 1905.

2- Calif., Idaho, Mont., Nev., Utah, Wash., Wyo., Arizona.

methods universally employed to convey religious truths. Curiously enough, it has seemed impossible to read the Bible, the final basis of all Christian dogmas, without giving undue emphasis to points of sectarian division. Thus influenced by misdirected zeal, piety, fanaticism, or bigotry, what might have been a beautiful exercise of Christian devotion, degenerated into narrow sectarianism and led to unreasonable bickerings, strife and discord. This failure to exercise a spirit of Christian forbearance and the natural unreasonableness of man on religious questions, among other things, has led many educational leaders to advocate the advisability of shutting out entirely all religious teaching from the common schools of America. No supreme court has held that it is the duty of the state to teach religion; all decisions, except that of the Maine court, held that the state cannot require the pupils to be present at religious exercises. On the other hand, the necessity for the inculcation of religious principles by some authority is generally conceded. Few educators and no legal enactments or opinions, with the possible exception of the opinion of Attorney General Jones of the state of Washington, would make our schools Godless in the popular conception of the term.

At the meeting of the National Educational Association in nineteen hundred two, Commissioner Harris read a paper on "Separation of Church and School" that well expresses the views of those who hold that the Bible as a religious



book and all religious exercises should be kept out of the publicly supported school.

Doctor Harris first sets forth the necessary incompatibility of the two American ideas, the sacred guarding of the cause of religion and the rights of conscience on the one hand and the separation of church and state on the other, if religion is to be taught in schools supported by taxation. It is not possible to teach religion as it should be taught in a secular school where many sects are gathered, nor can it be taught by the same methods as secular instruction. Sense-perception, imagination, symbolic language, suggestive surroundings, appeal to heart, not intellect, are some of the avenues by which religious truths enter the soul. There is no such reality as an unsectarian religion."A religion is not a religion which cannot arouse the spiritual sense in children and uneducated people as well as in learned and deep thinking people. It is impossible to make a generalization of Christianity without depriving it of something that is essential to the nature of religion, namely an appeal to the senses and the imagination.---We must conclude, therefore, that the prerogative of religious instruction is the church and must remain in the church and that in the nature of things, it cannot be farmed out to the secular schools without degenerating into a mere deism bereft of living Providence, or else changing the school into a mere parochial school and destroying the efficiency of secular instruction¹

1.-Separation of the Church from the School Supported by Public Taxes.--Proc. N.E.A., 1903.pp.351 ff.

The discussion of the paper was earnest and spirited. It revealed the fact that few members present were ready to agree with the conclusions of Dr. Harris. Several expressed open disappointment at the stand taken. Dr. Schaeffer of Pennsylvania among others standing out firmly in the conviction that it is possible to teach the essential religious truths through the proper use of the Scriptures in the common schools.

Over and over again one finds civil authorities deprecating the necessity of excluding from schools where objection to its sectarian character is made. While the final word has not been said, and although sometime in the future we may find it necessary to recede---in the interests of the common good---from our extreme policy of the separation of everything religious from everything secular and civil, even as we have receded gradually from the abstractions "natural" and "inherent" rights, all that can be said safely and definitely is this: Legally the necessity of religious education is recognized, but not as a duty enjoined on the state. It cannot be made compulsory either for teacher or pupil even in local political units. Where it meets with no objection, it may be carried on in public schools; when it wounds the conscience of any, even the humblest or most cantankerous taxpayer, his rights and wrongs must be recognized and respected. In very many instances, the only possible policy--however reluctant we may be to admit it--is to exclude all

religious exercises from the schools. By every possible means moral habits, ethical ideals, and the principles of right living are to be inculcated.

The second question, "What is the legal attitude of the several states toward Bible reading and what the custom in the public school?" has been answered in detail in the preceding chapters and touched upon in the previous paragraph. Some interesting aspects are presented.

That the Bible itself is not regarded as a sectarian book is made plain by these facts:

- a. No supreme court has ever so held it. The Wisconsin court has declared that indiscriminate Bible reading is sectarian teaching, but that much of the Bible cannot be so considered. No other decision has gone quite so far as Wisconsin in this declaration.
- b. The Bible is read in all or part of the schools of thirty nine states; of these, thirty one forbid sectarian instruction.
- c. It is required or permitted by legal enactment in seventeen states, in fourteen of which everything sectarian is positively forbidden in the public schools.

Whether simple reading of the Scriptures as an opening morning exercise, with perhaps the Lord's Prayer and the singing of a hymn, is religious or not is a very interesting and withal a subtle question. Rhode Island and

Wyoming report "No religious instruction, but the Bible is generally read." The State Superintendent of Wyoming adds "for the moral effect it has on the pupils and the community." The Kansas supreme court based its opinion in the case cited in Chapter VIII on the fact that the evidence showed there was no religious purpose in the Bible exercise which the teacher conducted. Two questions seem fair at this point: if the purpose in repeating the Psalms of David and the Lord's Prayer is not a religious one, what purpose has the exercise? In the mind of the ordinary Christian parent who urges that the Bible be read daily, what is the essential good that he believes will accrue to his child from the exercise?

One other phase of the problem of Bible reading remains to be noted. The use of the Bible as a non-religious book has within the last decade received much emphasis. The ignorance manifested by students of the ordinary historical facts and literature of the Bible; and their consequent inability to appreciate much that is expressive and beautiful in art and literature, so much of which is inspired by Sacred Writ; not to mention the intrinsic literary and cultural value of the Bible itself of which the present generation of students are reaping no benefit, these facts are much deplored by the educators of recent years. This feeling found voice in a resolution adopted by

the National Educational Association in 1902.¹"We regard true education as inseparable from morality---and the public school is the recognized agency to make this relation binding.---We plead not for sectarian training of any kind, but for that moral instruction which must underlie true life and character. It is apparent that familiarity with the English Bible as a masterpiece of literature is fast decreasing among pupils in the schools. This is a direct result of a conception that regards the Bible as a theological book merely, and leads to its exclusion from the schools of some states, as a subject of reading and study. We hope for a change of public sentiment that will permit the reading and study of the English Bible as a literary work of the highest and purest type side by side with the literature it has inspired and in large part formed. We do not urge this in the interest of sectarian instruction of any kind, but that this great book may ever be the teacher's aid in the interpretation of history and literature, law and life---an unrivaled agency in the development of true citizenship as well as in the formation of literary style."

At the same meeting Nicholas Murray Butler, President of Columbia University, read a paper entitled "Some Pressing Problems" in which this phase of the use of the

1. Committee on Resolutions, Proc. N.E.A., 1902, p. 27.

Bible is forcefully presented.

President Butler first calls attention to the decadence of Biblical knowledge among people generally. "I am laying down this thesis", he says, "the neglect of the English Bible incapacitates the rising generation to appreciate the masterpieces of English literature from Chaucer to Browning, and it strikes out of their consciousness one element, and for centuries the controlling element in your civilization and mine.---I consider that we are not only on the point of impoverishing life and literature by the neglect of the English Bible, but that we have already impoverished life and literature.---I am speaking of a condition at hand. We are impoverishing life and literature by striking out of our life and our reading one great monument of our literature, the source from which much that is best in later centuries is drawn, the inspiration upon which the best English style has been built.---I am not talking about religious teaching in school---I am protesting against sacrificing a knowledge of our civilization to theological differences. I know the supreme court of the state of Wisconsin has held the Bible to be a sectarian book; I know that statute books are full of laws prohibiting Bible reading in the school. My view is that this is all wrong.---"¹

While as a matter of fact, one must necessarily disagree totally with President Butler as to the statutory

1. Nicholas Murray Butler: Some Pressing Problems; Proceedings of the National Educational Association, 1902, pp. 72ff.

provisions against Bible reading, conditions to which he calls attention are patent to every thoughtful person and certainly present a deplorable aspect. But, give the American people time enough and they usually come round to a wholesome, reasonable view. It may be that these notes of protest mark the turning tide of public opinion, and at no distant day we may see the Bible placed in the schools on at least an equal footing with the Koran, the Five Classics or the Odessy.

The third question, "What is the meaning of this attitude of the states in terms of centralization of authority in educational control?" can be answered in a few words. In Chapters VII and VIII it has been shown that in matters of religion it is the settled policy of the state to give the widest individual latitude, limited only by a consideration of the religious sentiments and conscientious scruples of all concerned. For this reason state legislatures or departments of education have been reluctant to make any definite requirements or prohibitions, choosing rather to leave the whole matter in local hands. This attitude has been repeatedly approved by judicial opinion. The supreme courts of Iowa, Maine, Michigan, Nebraska, Massachusetts, Ohio and Vermont and the state departments of Colorado, Illinois, Indiana, Missouri and Oregon¹ have declared that local school boards or teachers are competent to decide

1. Rhode Island may be added to this list.

whether Bible reading or religious exercises are prudent or desirable. The Ohio rule, "A requirement of a board of education that the Bible be read in the schools as an opening exercise cannot be interfered with by the courts and is not in violation of any constitutional rights,"¹ is the explicit or tacit opinion of many of the older states. In the western states we have noticed a stronger disposition to centralize jurisdiction, but as a rule, the local community is still the controlling factor in things religious.

So far as one may judge, there is no disposition to dispute the right of the states to legislate finally on this as on other school affairs. As a matter of fact few legislatures have found it expedient or desirable to do so. The returns from the ten states that by statute require or permit the Bible in the schools, and the half dozen that forbid religious instruction, show that these laws are obeyed about as often and broken almost as frequently as the ordinary legal enactment.

The kernel of the matter is this: Permission to hold religious exercises in the public schools is a privilege granted by the individual states, either by direct legal enactment or, more frequently, silent assent; the regulation thereof is a function of local authorities. On the one hand, Bible reading may be prohibited by statute, 1. Court Report, 1 N.P., 140.

i.e. in the common schools; on the other, the state cannot require teachers or pupils to give or receive religious instruction.

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